



Deposition of:
Gina Spearman

November 8, 2021

In the Matter of:
**Spearman, Gina Vs. Broker Solutions,
Inc. D/B/A New American Funding**

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Spearman, Gina Vs. Broker Solutions, Inc. D/B/A New American Funding

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

-----x
GINA SPEARMAN,)
) Case No.
Plaintiff,) 1:20-cv-04981-CAP
)
v.)
)
BROKER SOLUTIONS, INC.,)
d/b/a NEW AMERICAN FUNDING,)
)
Defendant.)
-----x

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The videotaped deposition of GINA SPEARMAN, taken on behalf of the Defendant, taken pursuant to the stipulations contained herein; the reading and signing of the deposition being reserved; taken before Karen D. Fuhs, Certified Court Reporter, commencing at 10:01 a.m., on the 8th day of November, 2021, at 3535 Piedmont Road, Building 14, Suite 230, Atlanta, Georgia.

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David Ramirez-Videographer (Present-In person)

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are on the record and the time is approximately 10:01 a.m. This is the beginning of the videotaped deposition for Gina Spearman.

Would counsel present please identify themselves and who they represent for the record?

MS. GIBSON: This is MaryBeth Gibson at the Finley Firm and I represent Gina Spearman, the Plaintiff.

MR. HARGROVE: Travis Hargrove also of the Finley Firm, also for the Plaintiff.

MR. PERLOWSKI: Henry Perlowski --

MR. JACKSON: This is Nick Jackson at the Finley Firm, I'm attending via Zoom, and I also represent the Plaintiff.

MR. PERLOWSKI: Sorry about that, Nick.

Henry Perlowski here for New American Funding.

MR. OGLETREE: And Chase Ogletree for New American Funding as well.

THE VIDEOGRAPHER: Thank you, Counsel.

Will the court reporter please swear in the witness.

GINA SPEARMAN,

1 after first having been duly sworn, testified as
2 follows:

3 CROSS-EXAMINATION

4 BY MR. PERLOWSKI:

5 Q Good morning, Ms. Spearman. My name's Henry
6 Perlowski. We met a few minutes ago. Nice to meet
7 you.

8 A Nice to meet you as well.

9 Q Have you ever been deposed before?

10 A I have not.

11 Q Okay.

12 I know you, at least, participated remotely
13 in the deposition of Mr. Fellows, but let me just go
14 ahead and start with a couple of ground rules, if I
15 could.

16 A Sure.

17 Q We're going to be talking a lot today. I'm
18 going to do my very best to let you finish your
19 answer. I would also ask if you could let me finish
20 my question, because the court reporter has to take
21 our conversation down, okay?

22 A Sure.

23 Q And if at any point in time -- look, it's
24 going to be human nature where you're anticipating
25 the answer to my question and you may jump in. I may

1 ask you to let me finish my question. I'm not trying
2 to be rude. I just want to make sure the testimony
3 reads clearly, okay?

4 A Okay.

5 Q And if at any time you do not understand my
6 question, I would ask you to please let me know,
7 okay?

8 A Okay.

9 Q But if you don't let me know, I'm going to
10 assume that you did understand my question; is that
11 fair?

12 A Yes.

13 Q Okay.

14 Also, this is not an endurance contest.
15 We'll be taking breaks periodically, but if at any
16 time you feel you need to take a break, just let me
17 know, I'm happy to accommodate it, as long as there's
18 not a question sitting out there, okay?

19 A Yes.

20 Q So you said you have not been deposed
21 before.

22 Have you ever given testimony in a court
23 proceeding before?

24 A No.

25 Q By court, have you ever given testimony in

1 an arbitration proceeding, which is a little
2 different than a court proceeding, in that it's more
3 likely to be around a conference room table than in
4 an actual courtroom; have you ever given testimony in
5 an arbitration proceeding before?

6 A No.

7 Q Other than this lawsuit and discounting,
8 like, a minor traffic offense, have you ever been a
9 party to any kind of legal proceeding before?

10 A No.

11 Q Ms. Spearman, are you on any medications
12 that might impair your ability to give testimony?

13 A No.

14 Q So another ground rule, I should have
15 mentioned a second ago, unless I specifically ask --
16 and I don't anticipate doing that -- at no time today
17 am I asking you to reveal conversations that you may
18 have had with your lawyers, okay?

19 A (Nods head.)

20 Q So subject to that, what did you do to
21 prepare for your deposition today?

22 A I met with my attorneys.

23 Q When?

24 A Friday.

25 Q For how long?

1 A A few hours.

2 Q Was anyone else present besides yourself and
3 your lawyers at that meeting?

4 A No.

5 Q Did you review any documents in preparation
6 for the deposition?

7 A Yes.

8 Q Do you recall which ones?

9 A Various. Various documents.

10 Q Do you recall which kinds of various
11 documents, even just categories of documents that
12 you --

13 A Employment agreements.

14 Q Yours?

15 A Yes.

16 Q With New American Funding?

17 A Yes.

18 Q And I may refer to New American Funding
19 throughout the deposition as N-A-F; is that okay?

20 A Yes. Most people would say NAF.

21 Q NAF. Okay. NAF it is.

22 Other than your employment agreements with
23 NAF, do you recall reviewing any other kinds of
24 documents in preparation for the deposition today?

25 A No.

1 MS. GIBSON: And if I may say, you have to
2 give your responses verbally --

3 THE WITNESS: Okay.

4 MS. GIBSON: -- although he is recording
5 it --

6 THE WITNESS: Okay.

7 MS. GIBSON: -- yes, nos, head nods don't
8 work.

9 THE WITNESS: Got it.

10 MS. GIBSON: Okay.

11 BY MR. PERLOWSKI:

12 Q Ya. I was actually just going to say that.
13 And again, that's human nature. I mean, you know --

14 A Yes.

15 Q -- you and I are talking, we're looking at
16 each other, you're nodding, but I may -- as MaryBeth
17 just did -- ask you to give audible answers, so the
18 court reporter can take it down.

19 A Sure.

20 Q When was the last time you spoke with Kelly
21 Allison?

22 A Not sure I can give you a specific date, but
23 a few weeks ago. Possibly a month.

24 Q Who initiated that conversation?

25 A Well, we met for -- we met for dinner. So,

1 I believe she initiated requesting or asking if I
2 wanted to get together.

3 Q Okay.

4 Where did you meet for dinner?

5 A The Mill Kitchen and Bar in Roswell.

6 Q So as I understand what you just said, she
7 asked you if you wanted to get together for dinner?

8 A Yes.

9 Q Okay.

10 A To the best of my recollection, yes.

11 Q Did she say why she wanted to get together
12 for dinner?

13 A We're friends.

14 Q Prior to getting together at the Mill
15 Kitchen and Bar, when was the last time that you had
16 physically seen Ms. Allison in person? I don't mean
17 like through Zoom or --

18 A Uh-huh.

19 Q Ya.

20 -- Skype or anything like that.

21 A I see her once every couple of months.

22 Q You see her once every couple of months. Is
23 that part of -- just periodic social get together or
24 is there, say, a function that the two of you
25 typically attend that happens to meet every couple of

1 months?

2 A Social.

3 Q Okay.

4 During your dinner with Ms. Allison at the
5 Mill Kitchen and Bar, did the topic of your dispute
6 with NAF come up?

7 A The existence, I guess, of the lawsuit and
8 the fact that it was public knowledge. That's all
9 that I recall.

10 Q So the conversation about the existence of
11 the lawsuit and the fact that it was public
12 knowledge, how did that topic come up, to the best of
13 your recollection, from your meeting with
14 Ms. Allison?

15 A I believe she just asked me, do you know
16 that it's public knowledge.

17 Q Do you recall the context in which she asked
18 you that question? I mean, did it come out of the
19 blue or was it in the context of something else being
20 discussed?

21 A I don't remember anything else about it
22 other than that question.

23 Q Was there any discussion that the -- that
24 your dispute with NAF was being used against NAF in
25 the marketplace?

1 MS. GIBSON: Objection. Foundation.

2 You can answer.

3 THE WITNESS: I can't answer that with any
4 certainty. I do remember, you know, her -- her
5 saying that -- that someone at New American had
6 brought it to her attention.

7 BY MR. PERLOWSKI:

8 Q She -- so, she said that someone at New
9 American had brought what to her attention?

10 A The lawsuit.

11 Q So she said that someone at NAF brought the
12 lawsuit to her attention?

13 A Uh-huh. Yes. I didn't mean to say uh-huh.

14 Q Did she give you any context for how the
15 lawsuit was brought to her attention, again, what
16 circumstance?

17 A I don't recall.

18 Q Was there any discussion during your dinner
19 meeting that one or more competitors of NAF were
20 using the lawsuit against NAF in the marketplace?

21 MS. GIBSON: Objection. Foundation.

22 THE WITNESS: No. I don't recall that.

23 BY MR. PERLOWSKI:

24 Q Did the topic of depositions come up during
25 your dinner meeting with Ms. Allison?

1 A No.

2 Q How long did you work with Ms. Allison?

3 A Not -- not consistently, but for over
4 20 years.

5 Q Other than the dinner meeting at Mill
6 Kitchen, had you discussed your lawsuit with
7 Ms. Allison at any time since you left NAF?

8 A I have not discussed the details of the
9 lawsuit with her, no.

10 Q That wasn't quite my question.

11 A Okay.

12 Q Have you discussed the lawsuit with
13 Ms. Allison at any time since you left NAF other than
14 the discussion at the Mill Kitchen?

15 A No. Other than what I've described.

16 Q Which companies did you and Ms. Allison work
17 together?

18 A Home Bank Mortgage Corporation. Home Star,
19 which became Optimum Financial. Countrywide Home
20 Loans. Academy Mortgage, which was acquired by
21 Caliber Home Loans. And New American Funding.

22 Q Was that in chronological order, to the best
23 of your recollection?

24 A (Nods head.)

25 Q Yes?

1 A Yes.

2 Q Okay.

3 Other than getting together with Ms. Allison
4 every couple of months socially, do you do anything
5 else socially with her?

6 A No.

7 Q Since you left NAF, have you had any
8 discussions with Sarah Laprade about the lawsuit?

9 A No.

10 Q Since you left NAF, have you had any
11 discussions with anyone else in NAF's Sandy Springs
12 office regarding the lawsuit?

13 A No.

14 Q Have you had any discussions with Jon Reed
15 about the lawsuit?

16 A No.

17 Q How about Scott Frommert?

18 A No.

19 Q Other than Ms. Allison, just talked about,
20 have you had any discussions about the lawsuit with
21 any other former or present NAF employees since you
22 left NAF?

23 A No.

24 Q At any point in time in connection with your
25 relationship with NAF -- so broader than just this

1 lawsuit -- have you ever engaged Lee Parks to assist
2 you?

3 A No.

4 Q Do you know who Mr. Parks is?

5 A I don't know him, but I -- yes. I've heard
6 the name.

7 Q Have you ever engaged Lex Watson to assist
8 you in any aspect of your relationship with NAF?

9 A Yes.

10 Q When?

11 And again, I don't -- I'm not asking for
12 substance of your conversations with him, just asking
13 for time.

14 A It would have been late '19, 2019. I can't
15 say with certainty. I would say maybe September,
16 October.

17 Q Did he attend a meeting, Mr. Watson, with
18 yourself, Jon Reed, and Scott Frommert in NAF's Sandy
19 Springs offices in around the fall of '19?

20 A Yes.

21 Q Ms. Allison was also present at that
22 meeting?

23 A Yes.

24 Q Do you recall anyone else being present at
25 the meeting other than Mr. Watson, yourself,

1 Ms. Allison, Mr. Reed, and Mr. Frommert?

2 A There was a CPA that Kelly works with that
3 she requested be there.

4 Q So the CPA that was present, not someone who
5 was employed by NAF, correct?

6 A That's correct.

7 Q Okay.

8 Do you recall the name of the CPA or the
9 firm?

10 A I don't.

11 Q Okay.

12 Again, I'm not asking about any private
13 conversations that you may have had with Mr. Watson
14 in connection with this meeting, but tell me what was
15 the purpose of the meeting, to the best of your
16 understanding.

17 A New American Funding was proposing to change
18 our original agreement, which the agreement would
19 have been from November of 2016, they were looking to
20 change that agreement. And it was going to be based
21 off of a profit and loss would be the basis -- would
22 be part of the basis of the compensation. And they
23 were going to be drafting a new agreement.

24 And so, we were discussing that that P and L
25 model, and how it would be structured, and how the

1 agreement might be structured. Because it was going
2 to replace our November 2016 agreement.

3 Q So, as you understand it, the new agreement
4 that was being discussed was just going to be sort of
5 a wholesale replacement of what was in place at the
6 time?

7 MS. GIBSON: Objection. Foundation.

8 THE WITNESS: It wasn't going to replace the
9 entire agreement. It was going to replace the
10 override bonus component to something else.

11 BY MR. PERLOWSKI:

12 Q What was being discussed in terms of what
13 would replace the override bonus component of your
14 compensation?

15 A A profit and loss-based compensation.

16 Q Do you recall any specifics of what was
17 being discussed in terms of how you and Ms. Allison
18 might be compensated under the profit and loss-based
19 compensation model?

20 MS. GIBSON: Objection. Form.

21 THE WITNESS: Do I answer?

22 MS. GIBSON: You can answer.

23 BY MR. PERLOWSKI:

24 Q Ya.

25 When Ms. Gibson objects, I have an

1 opportunity, if I choose to, to rephrase my question.
2 I don't have to, that's my choice, but unless you're
3 instructed not to answer it, you are to answer the
4 question.

5 So, the question was: Do you recall any
6 specifics of what was being discussed in terms of how
7 you would be compensated under the profit and loss
8 model?

9 MS. GIBSON: Same objection.

10 THE WITNESS: I don't remember specifically.

11 If you have a specific question, I'm happy --

12 BY MR. PERLOWSKI:

13 Q Well, that was my specific question.

14 Do you remember what was being proposed in
15 terms of how you would be compensated under the
16 proposed profit and loss model?

17 A What was being discussed was that whatever
18 the profit of our region was, we would -- our
19 compensation would be based on a percentage of that.
20 That would be one component.

21 Q Do you recall what other components were
22 being discussed in terms of your compensation in
23 addition to something based on the profit of your
24 region?

25 MS. GIBSON: Objection. Foundation.

1 THE WITNESS: There was discussion back and
2 forth on if it would still re -- if the new
3 agreement would still retain a portion of a
4 production override in addition to the
5 profitability. I don't remember the exact
6 terminology they were using, but it was those two
7 components.

8 BY MR. PERLOWSKI:

9 Q When that meeting concluded, to your
10 understanding, where were things left about what was
11 going to happen next with respect to your contract?

12 MS. GIBSON: Objection. Form.

13 THE WITNESS: NAF had hired Scott Frommert
14 as CFO. And so, he was working on -- he was
15 going to continue to work on the P and L, its
16 transparency, and that sort of thing, to -- since
17 that would be the basis for the compensation.

18 BY MR. PERLOWSKI:

19 Q Do you recall when NAF hired Mr. Frommert;
20 if you know?

21 A It was a few months after the 2019
22 leadership meeting -- which I believe was in
23 February, I can't be certain, but I'm pretty sure it
24 was February -- in which NAF informed us there was a
25 misallocation of \$30 million. And they were hiring a

1 CFO, because they did not have one at that time.

2 So, they were hiring a CFO to right the
3 ship, I believe is kind of the terminology that was
4 used. And he would also be working on a P and L
5 platform for SVPs, regional managers. He was --
6 shortly thereafter.

7 Q Okay.

8 In the discussions about the P and L model,
9 you mentioned that Mr. Frommert was hired to achieve
10 transparency with respect to the P and L model; is
11 that correct?

12 A That was what was discussed after the
13 meeting in Atlanta with Mr. Frommert, was that we did
14 not have a high level of trust in the P and L, given
15 the misallocation and the other financial issues.

16 Q You said you didn't have a high level of
17 trust in the P and L, what -- what issues did you not
18 trust?

19 A Certain line items of the P and L. There
20 was no way to see the invoices or what -- what made
21 up that line item, so that we could, you know, check
22 that on a regular basis to ensure the accuracy.

23 Q Do you recall which line items that you had
24 concerns about?

25 A Almost all of them. All of the

1 expense-related ones.

2 Q Were you questioning whether the expenses
3 were incurred, or how they were allocated, or both?

4 A Both.

5 Q Do you recall any specific expense that you
6 questioned whether it was incurred or not?

7 A No, I don't recall.

8 Q Do you recall any specific expense that you
9 questioned how it was being allocated?

10 A I don't recall.

11 Q During your employment with NAF, what
12 personal email addresses did you maintain?

13 A Personal email addresses? That's the
14 question?

15 Q Yes.

16 A You want the actual email address?

17 Q Yes.

18 A Gina S at spearmania dot com.

19 Q Spearmania would be Spearman with an I-A at
20 the end?

21 A Correct.

22 Q Okay.

23 Any others?

24 A That's it.

25 Q During your employment at NAF, what -- at a

1 high level, what computers did you use to conduct
2 business?

3 A The NAF-issued computer.

4 Q The one that you returned?

5 A Correct.

6 Q Did you also use a personal laptop during
7 your employment with NAF?

8 A No.

9 Q During your employment -- employment with
10 NAF -- I'm just using as context -- if I'm -- I'm
11 traveling later in the week. So, if I'm in a hotel,
12 I'll connect with our work system through a
13 virtual -- a VPN. If you were outside of NAF's
14 offices, would you connect to a NAF system, like
15 through a virtual private network?

16 A No.

17 MS. GIBSON: Objection. Form.

18 THE WITNESS: No. Not to my knowledge.

19 BY MR. PERLOWSKI:

20 Q No. Okay.

21 If you were working from home or remotely --
22 or otherwise remotely, how would you connect onto
23 NAF's systems?

24 A With a WiFi connection, I could access, you
25 know, email. And really -- everything was web-based,

1 to the best of my knowledge.

2 Q Okay.

3 If you were working on documents during your
4 employment with NAF, not necessarily an email, like
5 say a Word document or an Excel spreadsheet or
6 something like -- or PowerPoint, something like that,
7 would you typically store those on NAF's systems?

8 A I would save that on my computer, like my
9 docs.

10 Q And that was a folder on your computer?

11 A Yes.

12 Q Is Spearman your maiden name or your -- or
13 married name?

14 A Married.

15 Q What is your maiden name?

16 A White.

17 Q Have you gone -- ever gone by any names
18 other than Gina White or Gina Spearman?

19 A No.

20 Q Are you married?

21 A I am.

22 Q For how long?

23 A 26 years.

24 Q That was not a trick question.

25 What's your husband's name?

1 A He goes by Marty, M-a-r-t-y.

2 Q Spearman?

3 A Yes.

4 Q Do you have any children?

5 A Yes.

6 Q How many?

7 A Two.

8 Q Ages?

9 A 24 and 22.

10 Q And do they both have the last name
11 Spearman?

12 A Yes.

13 Q Where are you from?

14 A Georgia.

15 Q Where in Georgia?

16 A I was born in Waycross, Georgia. And we
17 moved to the Atlanta area when I was six or
18 seven years old.

19 Q Where did you go to high school?

20 A I went to two high schools because we moved.
21 I went to Campbell High School and Riverwood High
22 School.

23 Q And where did you go to college?

24 A Georgia.

25 Q Do you have a degree from Georgia?

1 A Yes.

2 Q Tell me when you graduated and your degree.

3 A I graduated in '92 and my degree is in
4 political science.

5 Q Do you have any postgraduate studies of any
6 kind?

7 A No.

8 Q Do you have any relatives in metro Atlanta
9 with the last name other than Spearman?

10 A Yes.

11 Q Can you tell me last names other than
12 Spearman --

13 A White.

14 Q -- in terms of your relatives in metro
15 Atlanta?

16 So White?

17 A (Nods head.)

18 Q Any others besides Spearman and White?

19 A Not that I can think of. No.

20 I have a step-niece and nephew.

21 Q Okay.

22 A That would count.

23 Q Do you recall what their last -- their last
24 names?

25 A Speaks.

1 Q S-p-e-a-k-s?

2 A Correct.

3 Q Do you regularly attend a church,
4 Ms. Spearman?

5 A Regularly, no.

6 Q If you periodically attend a church, which
7 one might it be?

8 A Holy Innocence, Episcopal.

9 Q Do you belong to any social organizations?

10 A Is a country club a social organization?

11 Q Sure. Sure.

12 A Yes.

13 Q Which one?

14 A Cherokee County Country Club.

15 Q Do you belong to any professional
16 organizations?

17 A Mortgage Bankers Association. Atlanta Home
18 Builders Association. Councils within those.

19 Q Sorry. You said councils within those?

20 A Ya. Like a member of, like, Professional
21 Women in Building, which is a division of Atlanta
22 Home Builders Association.

23 Q Do you remember the -- so you said
24 Professional Women in Building. Do you remember the
25 names of any of the other councils that you might

1 belong to that are affiliated with either the
2 Mortgage Bankers Association or the Atlanta Home
3 Builders Association?

4 A No.

5 Q Just the Professional Women in Building?

6 A Yes.

7 Q Okay.

8 If you could -- and you may have already
9 done this in part earlier in the deposition, but if
10 you could just give me an outline of your employment
11 history since you left Georgia. I know you gave me a
12 number -- names of companies in the --

13 A Uh-huh.

14 Q -- mortgage space, but let's go ahead and
15 start with -- and you can either do it in reverse
16 order or you can do it in -- you know, bringing it
17 forward, whichever's easiest for you.

18 A After Georgia, I worked for Venture Homes as
19 an onsite sales agent. Then got into the mortgage
20 business at a company called Peachstate Funding.

21 Q Okay.

22 A And then, picking up on the other companies
23 I listed Home Bank. After Home Bank, Wells Fargo.
24 Home Star slash Optimum. Countrywide. Academy.
25 Caliber. New American Funding.

1 Q When did you -- when did you work for
2 Peachtree -- sorry -- Peachstate Funding? Excuse me.

3 A Peachstate Funding from '93 to roughly
4 2000.

5 Q Fair to say that you've been continuously in
6 the mortgage business since '93?

7 A Correct.

8 Q What was your position with Caliber?

9 A I had a couple of titles there.

10 Q The most recent one, the last one.

11 A Builder manager.

12 Q What were your responsibilities as business
13 manager -- builder manager for Caliber? Excuse me.

14 A Business development, recruiting, management
15 of the production.

16 Q Did you work for Ms. Allison at Caliber?

17 A Yes.

18 Q She was your boss?

19 A From an HR reporting standpoint, yes.

20 Q And what was Ms. Allison's position at
21 Caliber for the last --

22 A To my recollection, she was an area manager.

23 Q And was your position as builder manager,
24 was it -- were your responsibilities within the area
25 that Ms. Allison managed?

1 A Yes.

2 Q And what was that area?

3 A Georgia and South Carolina.

4 Q Any other state besides Georgia and South
5 Carolina?

6 A Not that I can recall.

7 Q So when you left Caliber, to the best of
8 your recollection, your territory was Georgia and
9 South Carolina for Caliber?

10 A Yes.

11 Q And how are you -- to the best of your
12 recollection, how were you compensated at Caliber?
13 And I'm going to talk about it -- this will be at the
14 end of your employment with Caliber.

15 A I originated loans or I had an origination
16 team, so I received commissions on originations as
17 well as an override on production.

18 Q Were the commissions based on loans that you
19 yourself produced or was it -- or is the commissions
20 based on loans that others within the team produced?

21 A Combination.

22 Q And when you were at Caliber, explain to me
23 on which -- on what did you receive an override?

24 And again, talking about this will be the
25 end of your employment with Caliber, which I'm only

1 interested in what it was at the time you left.

2 MS. GIBSON: Objection. Form.

3 BY MR. PERLOWSKI:

4 Q So I want you to --

5 A It's been a little time, so --

6 Q Sure. I understand.

7 And look, we're going to be talking about
8 things today that happened, you know, some meaningful
9 time before November 8th of 2021.

10 So, I'm just asking what your best
11 recollection is of how you were compensated on an
12 override basis at the end of your employment with
13 Caliber.

14 A To the best of my recollection, I was paid
15 in override on the majority of the production of the
16 area.

17 Q Did you split that override with
18 Ms. Allison?

19 A No.

20 Q Do you recall what your override percentage
21 was?

22 A I do not.

23 Q You said you received an override on a
24 majority of the production in the area.

25 Do you recall any particular kinds of loans

1 where you would not receive an override at the end of
2 your employment with Caliber?

3 A I do not.

4 Q Do you recall when you were at Caliber
5 whether you received an override on loans made during
6 a loan officer's guarantee period?

7 A To the best of my knowledge, I did.

8 Q Did you receive an override on your personal
9 production while you were at Caliber?

10 A I do not recall.

11 Q Did you receive an override on brokered
12 loans with Caliber?

13 A To the best of my recollection, yes.

14 Q In your own words, can you describe to me
15 what a brokered loan is?

16 A A brokered loan is a loan in which the
17 company does not retain that loan after closing and
18 service it.

19 Q So you -- so the company, basically,
20 originates the loan and then flips it right away?

21 A Generally speaking, the company originates
22 the loan and sends it to another lender to
23 underwrite, fund, and service.

24 Q Okay.

25 When you were at Caliber, do you recall

1 receiving an override bonus on down payment
2 assistance loans?

3 A To the best of my memory, I did.

4 Q If you could just tell me in your own words
5 what is a down payment assistance loan.

6 A It's a loan in which the borrower is
7 receiving some sort of assistance from a third party
8 for the down payment.

9 Q Did you receive an override bonus on
10 secondary market issue loans at Caliber?

11 A To the best of my knowledge, yes.

12 Q What is a secondary market issue loan?

13 A I'm not 100 percent sure, but I can tell you
14 what I think.

15 Q Sure.

16 And your -- how you would describe it.

17 A It would be a loan in which the company had
18 little to no profit on the secondary market with that
19 loan.

20 Q When you were at Caliber, did you receive an
21 override bonus on Piggyback Junior Lien Loans?

22 A I'm not sure.

23 Q In your own words, what is a Piggyback
24 Junior Lien Loan?

25 A It's a loan in which the loan amount, that

1 the borrower is seeking, is divided into two loans; a
2 first mortgage and a second mortgage that describes
3 the lien position.

4 Q And when you were at Caliber, did you
5 receive an override bonus on closed and second lien
6 loans?

7 A I don't remember.

8 Q Can you describe to me what a closed and
9 second lien loan is, based on your understanding?

10 A Very similar to the previous category to
11 just a closed in loan as opposed to an equity line.

12 Q Do you recall what you earned from Caliber
13 in 2015?

14 A I do not.

15 Q Do you have an approximation?

16 A In 2015?

17 Q Yes.

18 A That would have been the year before. Okay
19 to estimate? I really don't remember.

20 Q Ya. I asked for your estimation.

21 A Okay.

22 500,000.

23 Q Do you recall what you earned from Caliber
24 in 2016 up to the time you left?

25 A I would think it's similar.

1 Q Similar gross or prorated?

2 A Prorated.

3 MS. GIBSON: Objection. Form.

4 BY MR. PERLOWSKI:

5 Q Okay. Let me -- let me clean that up.

6 So, you worked for Caliber throughout 2015?

7 A Yes.

8 Q So you earned -- your best -- your
9 estimation was 500,000 in 2015, which would be over
10 12 months, right?

11 A Yes.

12 Q You left Caliber in November of '16; is that
13 right?

14 A October, November.

15 Q October, November.

16 So you worked for Caliber for approximately
17 10 months or so?

18 A Yes.

19 Q In 2016?

20 A Correct.

21 Q So, did you -- do you think you earned
22 500,000 in that ten months or did you earn ten
23 twelfths of 500,000?

24 A I don't remember.

25 MS. GIBSON: Objection. Form.

1 THE WITNESS: I don't remember.

2 BY MR. PERLOWSKI:

3 Q Okay.

4 Do you still have your last contract with
5 Caliber?

6 A I do not.

7 Q How did you first come into contact with
8 NAF?

9 A A recruiter for New American Funding called
10 me.

11 Q Who was that?

12 A Paul Pritchard.

13 Q Pritcher or Pritchard?

14 A With a D on the end.

15 Q Okay.

16 A Pritchard.

17 Q Did Mr. Pritchard call you or did he call
18 you and Ms. Allison?

19 MS. GIBSON: Objection. Form.

20 THE WITNESS: To the best of my memory, he
21 called me.

22 BY MR. PERLOWSKI:

23 Q Okay.

24 Tell me about that conversation.

25 A He wanted to know if we had an interest in

1 hearing about New American Funding and coming to work
2 there.

3 Q How long had you been at Caliber as of
4 October '16?

5 A Approximately, I was there a total of
6 18 months.

7 Q So, started at Caliber early '15, does that
8 sound right?

9 A I would have to look back at my records to
10 give you an accurate answer on that.

11 Q When did you start with NAF?

12 A November of '16.

13 Q Do you recall which day?

14 A I do not.

15 Q Were you looking to leave Caliber when you
16 got the recruiter call or was it just one of those
17 out-of-the-blue calls?

18 A To the best of my knowledge, we were not
19 actively looking to leave.

20 Q While you were not actively looking to leave
21 Caliber, were you willing to take calls and listen?

22 MS. GIBSON: Objection. Form.

23 BY MR. PERLOWSKI:

24 Q Were you willing to take calls from other
25 mortgage companies and listen about the possibility

1 of leaving Caliber?

2 A Was I willing, is that your question?

3 Q Yes.

4 A Apparently. Because I took Paul's call.

5 Q You said that Mr. Pritchard asked if you
6 wanted to know if you had an interest in NAF?

7 A Uh-huh.

8 Q What did you say?

9 A I said that I would talk to my business
10 partner and let him know.

11 Q And when you said, you would talk to your
12 business partner, who are you referring to?

13 A Kelly Allison.

14 Q Did you consider Ms. Allison to be -- and
15 I'm not using this term in a legal sense, but your
16 business partner?

17 A Yes.

18 Q So, as of the fall of '16, would it be fair
19 to say that if you were going to consider leaving
20 somewhere, it would have been with Ms. Allison as
21 opposed to by yourself?

22 MS. GIBSON: Objection. Form.

23 THE WITNESS: Can you repeat the question?

24 BY MR. PERLOWSKI:

25 Q Sure.

1 So, in the fall of '16, is it fair to say
2 that if you were going to leave Caliber, you were
3 going to leave with Ms. Allison as opposed to off on
4 your own?

5 MS. GIBSON: Same objection.

6 THE WITNESS: Yes.

7 BY MR. PERLOWSKI:

8 Q So, did you, then, talk to Ms. Allison about
9 the possibility -- about the call you received from
10 NAF? Excuse me.

11 A Yes, I did.

12 Q Tell me about that conversation.

13 MS. GIBSON: Objection. Form.

14 THE WITNESS: I don't remember the details.

15 BY MR. PERLOWSKI:

16 Q Okay.

17 Why don't you describe to me how your -- how
18 either your discussions or -- to your knowledge,
19 Ms. Allison's discussions progressed with NAF.

20 A Because the company was based in California,
21 Southern California, Kelly was going to be at a
22 meeting in Southern California for Caliber. And we
23 decided to meet with New American Funding. So I flew
24 out after her meetings.

25 Q So, both you and Ms. Allison attended

1 meetings with NAF in Southern California?

2 A Yes.

3 Q Okay.

4 Prior to going out to visit NAF in Southern
5 California, had you spoken to any NAF representatives
6 aside from Mr. Pritchard?

7 A Not to my knowledge.

8 Q And I don't mean, you know, like, the
9 occasional -- I'm not talking about an email where
10 you're setting up the logistics of, you know --

11 A Okay.

12 Q -- the meeting in California. I'm talking
13 about an actual conversation with someone at NAF
14 about the opportunity, a substantive conversation.

15 MS. GIBSON: Objection. Asked and answered.

16 THE WITNESS: We spoke with Jon Reed. I
17 cannot recall if that was before or after the
18 meeting.

19 BY MR. PERLOWSKI:

20 Q Okay.

21 Who did you meet with when you were out in
22 Southern California? This is the first meeting that
23 you had with NAF in Southern California with
24 Ms. Allison.

25 A Jon Reed, Christy Bunce, Jan Preslo, Rick

1 Arvielo, Patty Arvielo.

2 Q How long was your meeting with NAF?

3 A It was over a two-day period of time.

4 Q Were both of those, the two -- the meetings
5 on both days, were they at NAF's offices?

6 A Yes.

7 Q When you -- when you left California to come
8 back, did you have an offer at the time?

9 A Not that I recall.

10 Q What was the opportunity that was described
11 to you during the two day meetings at NAF?

12 MS. GIBSON: Objection. Form.

13 BY MR. PERLOWSKI:

14 Q Let me rephrase the question.

15 During the two day meetings at NAF, you and
16 Ms. Allison discussed the possibility of joining NAF,
17 correct?

18 A Yes.

19 Q Based on your understanding, what was being
20 presented to you as the opportunity for you and
21 Ms. Allison to join NAF?

22 MS. GIBSON: Objection. Form.

23 THE WITNESS: They did not have a presence
24 in the Southeastern United States and they were
25 looking to open that market. So they were

1 looking for us to open offices for New American
2 Funding in the Southeast.

3 BY MR. PERLOWSKI:

4 Q When you were told that NAF didn't have a
5 presence in the Southeast, were you -- did you have
6 any understanding about like where NAF had a presence
7 that was the closest to the Southeast?

8 A I would -- from my recollection, we were
9 probably told where their existing branches were
10 located.

11 Q And at the time, you were -- at the time
12 that you were building manager for Caliber, it had
13 branches in Georgia and South Carolina that you were
14 responsible for?

15 A They had other branches than that, but
16 those -- those were where our branches were located,
17 to my memory.

18 Q Okay.

19 The branches that were under Ms. Allison's
20 oversight for Caliber were in Georgia and South
21 Carolina?

22 A Yes.

23 Q Okay.

24 So when NAF -- when you and Ms. Allison were
25 discussing the possibility of looking at opening

1 offices in the Southeast, during these initial
2 meetings, was there a discussion about where in the
3 Southeast that you would be looking to open offices
4 for NAF?

5 A Yes.

6 Q Where?

7 A I believe there were seven to eight states
8 being discussed, but I cannot remember exactly.

9 Q Did either you or Ms. Allison, for Caliber,
10 have a presence outside of Georgia or South Carolina?

11 MS. GIBSON: Objection. Form.

12 THE WITNESS: I cannot be sure. You know,
13 we had a desire to grow beyond those two states.
14 And I cannot recall if we had opened anything
15 outside of Georgia or South Carolina while we
16 were still at Caliber. I cannot recall.

17 BY MR. PERLOWSKI:

18 Q And so, what I'm getting at is -- okay.

19 So my understanding, from your testimony, is
20 that you and Ms. Allison, either predominantly or
21 exclusively, worked in Georgia and South Carolina?

22 A Uh-huh.

23 Q That was your presence for Caliber?

24 A Uh-huh.

25 Q NAF's talking about opening up -- you know,

1 looking to open in seven or eight states.

2 Was there a discussion of how you and
3 Ms. Allison could effectively expand your footprint
4 from the one that you had for Caliber to seven or
5 eight states?

6 MS. GIBSON: Objection. Form.

7 THE WITNESS: Ya. We discussed opening in
8 more states than Georgia and South Carolina.

9 BY MR. PERLOWSKI:

10 Q Okay.

11 Do you recall which states you discussed
12 opening in with NAF, outside of Georgia and South
13 Carolina, during these initial meetings?

14 A I can't, with certainty, say what we
15 discussed at that stage.

16 Q Do you recall whether you discussed the
17 possibility of opening locations in Tennessee during
18 the initial meetings with NAF?

19 A I can't say for sure.

20 Q What about Virginia?

21 A I can't say for sure if we discussed it.

22 Q What about Florida?

23 A At that stage, I cannot say for sure.

24 Q During your two-day meeting with NAF, was
25 the topic of how you and/or Ms. Allison would be

1 compensated come up?

2 A Yes.

3 Q Tell me what you can recall about any
4 compensation-related discussions during the two-day
5 meeting at NAF.

6 A They discussed an override model
7 compensation.

8 Q Do you recall what they discussed about the
9 override model of compensation?

10 A That there would be, in their terms, several
11 different buckets of override.

12 Q Do you recall what buckets of overrides were
13 discussed during your two-day meeting at NAF?

14 A To the best of my knowledge, we discussed an
15 area manager, a branch manager, and a compensation
16 differential.

17 Q So the area manager override, was that being
18 discussed with respect to Ms. Allison's compensation?

19 A It was for both of us.

20 Q Okay.

21 Tell me what was -- what you can recall
22 being discussed about the area manager override at
23 the meetings at NAF.

24 So, for the purpose of these questions, I'm
25 referring to the two-day meeting.

1 A I don't really remember anything other than
2 the fact that there were the different levels of
3 buckets.

4 Q Okay.

5 Do you recall anything more specific being
6 discussed about the branch manager override?

7 A No.

8 Q Okay.

9 You said compensation differential?

10 A Yes.

11 Q Explain to me what was your understanding of
12 what that meant.

13 A That there was compensation and basis points
14 that we would share in a portion of that.

15 Q Was there any discussion of how you would
16 share in the basis points compensation?

17 A Not that I recall.

18 Q In terms of describing the buckets of
19 overrides that you just mentioned, who was leading
20 those discussions on NAF's part; to your
21 recollection?

22 A Jon Reed.

23 Q What was your understanding of Mr. Reed's
24 position at the time?

25 A He was EVP of production for the company.

1 Q Before you joined NAF, did you go out to
2 NAF's offices at any other time after the initial
3 two-day meeting?

4 A I believe I did, but I can't be sure.

5 Q So you -- you believe you went out to
6 California at least one other time before you joined
7 NAF?

8 A I can't remember.

9 Q Do you recall anything specific about any
10 meeting that you may have had in California before
11 you joined NAF, there was a meeting other than the
12 two-day meeting we just discussed?

13 MS. GIBSON: Objection. Form.

14 BY MR. PERLOWSKI:

15 Q So -- just to clean that up.

16 So, I'm talking about -- and I recognize,
17 Ms. Spearman, you said you think -- you believe you
18 went out another time, but you're not sure. So what
19 I'm trying to get at is, we've talked about the
20 two-day meeting --

21 A Uh-huh.

22 Q -- put that one aside --

23 A Uh-huh.

24 Q -- for the purpose of this question.

25 Do you recall anything specific that was

1 discussed between you and NAF about -- that was in
2 another meeting that was held in California before
3 you joined NAF?

4 A I do not recall anything about any other
5 meetings.

6 Q Okay.

7 Did any NAF representatives come out to
8 Georgia to meet with you and/or Ms. Allison before
9 you joined NAF?

10 A Not that I recall.

11 Q Okay.

12 In terms of negotiations with NAF about
13 joining, between you and Ms. Allison, who took the
14 lead in those discussions, if anyone?

15 MS. GIBSON: Objection. Form.

16 THE WITNESS: It was joined.

17 BY MR. PERLOWSKI:

18 Q We're going to -- and we're going to get to
19 your -- with your offer letter and your Regional
20 Manager Agreement in a moment, but I just -- before
21 any offer letter or Regional Manager Agreement was
22 presented to you, do you recall anything more
23 specific in terms of your discussions with NAF about
24 override bonuses other than what you've already
25 described today?

1 MS. GIBSON: Objection. Form.

2 THE WITNESS: I don't recall anything more
3 specific.

4 BY MR. PERLOWSKI:

5 Q Okay.

6 So -- just so the record's clear, what I'm
7 trying to get at -- we had a conversation where you
8 believe Mr. Reed was leading a discussion about the
9 buckets of overrides --

10 A Yes.

11 Q -- right? Area manager, branch manager,
12 comp differential.

13 Do you recall any verbal discussions with
14 NAF, where there was any more specificity about your
15 override bonus compensation before you joined NAF?

16 A I don't remember anything specific. No.

17 Q Okay.

18 Do you recall having any conversation with
19 any representative of NAF before you joined NAF about
20 how pricing exceptions would be handled?

21 MS. GIBSON: Objection. Form.

22 THE WITNESS: I do not recall.

23 BY MR. PERLOWSKI:

24 Q Okay.

25 Do you recall any discussions with any

1 representative of NAF before you joined NAF about
2 what kind of marketing budget you and Ms. Allison
3 might have?

4 A I recall that the marketing budget was put
5 into Kelly's agreement; seven-and-a-half basis points
6 per loan.

7 Q Do you recall any discussions about the
8 marketing budget with any representative of NAF
9 before you joined NAF?

10 And I understand you said that you recall
11 there might be something in Ms. Allison's agreement
12 about a marketing budget. I'm talking about any
13 discussions that you may have had with a
14 representative of NAF about the marketing budget
15 before you joined.

16 A I remember discussing that we did a lot of
17 marketing. And that we had, for example, a TV
18 contract.

19 Q You discussed having a TV contract with
20 representatives of NAF?

21 A From my recollection, yes.

22 Q What was the TV contract?

23 A It was for a TV show that is called
24 Atlanta's Best New Homes.

25 Q Was it a commercial placement during that TV

1 show?

2 A It was a two-minute segment in which myself
3 or someone else would give mortgage information on
4 the show.

5 Q So it was an actual segment within the show
6 as opposed to a commercial --

7 A That's correct.

8 Q -- during a break in the show? Okay.

9 Atlanta's Best New Homes, what station was
10 that on; do you recall? And I'm --

11 A I'm going to take a guess and say it was
12 WSB, but I'm not 100 percent.

13 Q Okay.

14 Do you recall what day and time the show
15 aired? I've never seen it, so I'm just -- I'm just
16 asking.

17 A Okay.

18 Saturday -- my recollection is Saturday at
19 ten a.m.

20 MS. GIBSON: Henry, can you just let us know
21 a good time for a break?

22 MR. PERLOWSKI: This is fine.

23 MR. GIBSON: Okay.

24 MR. PERLOWSKI: Absolutely.

25 THE VIDEOGRAPHER: The time is 11:07 a.m.,

1 we are off video record.

2 (Whereupon, a short break was taken.)

3 THE VIDEOGRAPHER: The time is 11:15 a.m.,
4 we are back on video record.

5 BY MR. PERLOWSKI:

6 Q Ms. Spearman, when we broke, we were talking
7 about any discussions that you may have had with NAF
8 about a potential marketing budget if you and
9 Ms. Allison joined NAF. You mentioned that you
10 believe that you recall that there was a marketing
11 budget in Ms. Allison's agreement.

12 Aside from what may be in Ms. Allison's
13 agreement, do you recall any specific discussions
14 with any NAF representatives about what marketing
15 budget you and she may have?

16 A Nothing specific, other than the fact that
17 we did a lot of marketing.

18 We were bringing over, you know, a group of
19 almost 100 employees, very large builder and realtor,
20 you know, referral partnerships. So, I know we
21 discussed the fact that there would be substantial
22 marketing.

23 Q So the discussion that you -- that you and
24 Ms. Allison and NAF were having was about bringing
25 over an entire team of people, you said around 100?

1 A Correct.

2 Q And those 100 or so people, where were they
3 based for Caliber?

4 A Georgia and South Carolina.

5 Q So did Caliber have various branch locations
6 throughout Georgia and South Carolina?

7 A Yes. Most of which we probably opened.

8 Q Did Caliber have a presence in Georgia and
9 South Carolina aside from yourself, Ms. Allison, and
10 your team?

11 A Yes.

12 Q When you and Ms. Allison and others left
13 Caliber to join NAF, did Caliber continue to have any
14 presence in Georgia and South Carolina?

15 A Yes.

16 Q Do you recall --

17 A Can I clarify something there?

18 Q Of course -- oh. Yes. Absolutely. Go
19 ahead.

20 A I can't be certain about if they retained
21 anything in South Carolina.

22 Q Okay.

23 A I know they did in the Atlanta area.

24 Q Okay. And thank you for mentioning that.

25 Another ground rule throughout -- I should

1 have mentioned at the start of the deposition. At
2 any point in time today you want to clarify or
3 correct any testimony that you've previously given,
4 you are free to do so --

5 A Okay.

6 Q -- okay?

7 Do you recall when you first received an
8 offer from NAF?

9 A I don't recall the exact date.

10 (Whereupon, Defendant's Exhibit Number One
11 was marked for identification.)

12 BY MR. PERLOWSKI:

13 Q Ms. Spearman, I'm going to show you what's
14 been marked as Exhibit One, which is an Offer of
15 Employment from NAF dated Friday, November 4th. It
16 was attached to the lawsuit that you filed.

17 My first question to you is: Do you
18 recognize this offer letter?

19 A Yes.

20 Q Do you recall receiving a prior version of
21 an offer letter from NAF?

22 A No.

23 Q Do you recall receiving an Offer of
24 Employment from NAF before November 4th of 2016?

25 A I'm sorry. How is that different from the

1 last question?

2 Q Do you recall receiving any Offer of
3 Employment from NAF before November 4th of 2016?

4 A No.

5 Q Okay.

6 This offer letter, if you look, it's about
7 halfway down the page, it says your proposed start
8 date was Tuesday, November 1st, 2016; do you recall
9 when you started with NAF?

10 A I don't recall, but I would assume it was
11 November 1st.

12 Q Do you recall starting with NAF before you
13 received an offer letter?

14 A I don't recall.

15 Q Do you recall how you received this offer
16 letter?

17 A Electronically --

18 Q By email --

19 A -- is what I recall.

20 Q By email to your spearmania email address?

21 A To the best of my recollection, yes.

22 Q Okay.

23 After you received this offer letter from
24 NAF, did you discuss it with anyone at NAF?

25 A I don't recall.

1 Q Ms. Spearman, go to the second to last page,
2 you see there's a signature for yourself, Gina W.
3 Spearman?

4 A Page 7 of 29?

5 Q Yes.

6 Page 7 of 8 of the offer letter, yes, Page 7
7 of 29 of the document that was filed with the court.

8 A Yes.

9 Q Did you -- is that a DocuSign signature
10 above your name?

11 A Yes. I believe so.

12 Q Okay.

13 Now the initials, you see there's initials
14 on each page?

15 A Yes.

16 Q And GWS, those are your initials?

17 A Yes.

18 Q Are those DocuSigned initials?

19 A To the best of my knowledge, yes.

20 Q Okay.

21 So, before you accept the offer
22 electronically, did you -- do you recall negotiating
23 any of these specific terms in the offer letter with
24 anyone at NAF?

25 A We would have had verbal conversations

1 probably about some of these components, yes; but I
2 don't remember specifically the details of that.

3 Q Okay.

4 So let's start with who would the verbal
5 conversations have been with about the terms of your
6 offer letter?

7 A Jon Reed and Christy Bunce.

8 Q These conversations have been not in person?

9 A I believe they would have been over the
10 phone.

11 Q Do you recall any specific terms that you
12 may have negotiated with either Mr. Reed or Ms. Bunce
13 over the phone?

14 A I remember discussing the non-solicit
15 portion of the agreement.

16 Q Do you remember discussing any other terms
17 of the offer letter with either Mr. Reed or Ms. Bunce
18 other than the non-solicit?

19 A I remember some discussions about COBRA,
20 them covering insurance. I was trying to find that
21 in here.

22 Q Covering your medical insurance continuation
23 from your leaving Caliber?

24 A Correct.

25 Q Okay.

1 Anything other than in terms of other terms
2 that you remember discussing with either Mr. Reed,
3 Ms. Bunce, or anyone else at NAF aside from the
4 non-solicit or the COBRA?

5 A Not that I can recall.

6 Q It looks like you -- on Page 2 of the offer
7 letter, see it says additional bonus. It appears
8 that were offered a one-time additional bonus to
9 cover COBRA verifiable -- verifiable COBRA expenses;
10 do you see that?

11 A Yes.

12 Q Does that reflect your discussions that you
13 had with NAF before you joined?

14 MS. GIBSON: Objection. Form.

15 THE WITNESS: Yes.

16 BY MR. PERLOWSKI:

17 Q Okay.

18 Did you engage legal counsel in connection
19 with your review of this Offer of Employment? I'm
20 just asking yes or no.

21 A No.

22 Q Do you know whether Ms. Allison did?

23 A I can't confirm if she did or didn't. I
24 believe she verbally told me that she was seeking
25 counsel.

1 Q Do you recall ever having any conversation
2 with any legal counsel that Ms. Allison may have
3 engaged? I'm not asking for any specifics. I'm
4 just -- that's a yes or no.

5 A No, I did not.

6 Q So the offer letter refers to you having a
7 position as regional manager in our OLA division.

8 What was your understanding of what the OLA
9 division was?

10 A It stands for Outside Loan Agent, which is
11 the retail division.

12 Q Uh-huh.

13 At the time you received this offer letter,
14 Ms. Spearman, did you also receive the Regional
15 Manager Agreement?

16 A Yes.

17 (Whereupon, Defendant's Exhibit Number Two
18 was marked for identification.)

19 BY MR. PERLOWSKI:

20 Q Ms. Spearman, before we actually look at the
21 Regional Manager Agreement, was it -- to your
22 recollection, was it within the same email in which
23 you received the offer letter?

24 A Yes.

25 Q Did you also DocuSign the Regional Manager

1 Agreement? And feel free to take a look at
2 Exhibit Two. At any time I'm asking you about an
3 exhibit, feel free to look -- take whatever time you
4 need to look at it.

5 A Yes. To my recollection, it was digitally
6 signed.

7 Q Do you recall signing the offer letter or
8 the Regional Manager Agreement around the same time?

9 A Yes.

10 Q Do you know which one you signed first?

11 A I do not.

12 Q Okay.

13 So, Ms. Spearman, if you look at
14 Exhibit Two, the Regional Manager Agreement, it
15 appears to be dated November 6th, do you see that?

16 A Yes.

17 MS. GIBSON: What page are you referring to?

18 MR. PERLOWSKI: It's the very first page.

19 MS. GIBSON: Okay.

20 BY MR. PERLOWSKI:

21 Q I'm sorry. Did you --

22 A Yes.

23 Q Okay.

24 Had you ever received a prior version of a
25 Regional Manager Agreement from N-A-F?

1 A Not that I recall.

2 Q Do you recall discussing any of the terms of
3 the Regional Manager Agreement with anyone at N-A-F
4 before you signed it?

5 A No. I don't recall.

6 Q Do you recall discussing any of the terms of
7 the Regional Manager Agreement with Mr. Reed before
8 you signed it?

9 A No. I don't recall.

10 Q Do you recall discussing the Regional
11 Manager Agreement with Ms. Bunce before you signed
12 it?

13 A No.

14 Q Do you recall discussing the Regional
15 Manager Agreement with Ms. Preslo before you signed
16 it?

17 A No.

18 Q Do you recall discussing the Regional
19 Manager Agreement with Mr. Arvielo before you signed
20 it?

21 A No.

22 Q Do you recall discussing the Regional
23 Manager Agreement with Ms. Arvielo before you signed
24 it?

25 A No.

1 Q So, in the offer letter, Ms. Spearman,
2 there's a discussion about the compensation being
3 differential, being split 70 percent to Ms. Allison
4 and 30 percent to you. And that's at the bottom of
5 Page 2. Was that something that you negotiated with
6 Ms. Allison or with NAF?

7 MS. GIBSON: Objection. Form.

8 BY MR. PERLOWSKI:

9 Q Okay.

10 Let me ask a different question: 70/30
11 split, how did that come to be, based on your
12 understanding?

13 A That was something Kelly and I decided.

14 Q To your knowledge, did NAF have any input in
15 deciding that split?

16 A Not to my knowledge.

17 Q I'm sorry?

18 A Not to my knowledge.

19 Q Okay.

20 So sticking with that provision of the offer
21 letter, it's paragraph three, and it's the bottom of
22 Page 2, very last paragraph on Page 2; are you there?

23 A Yes.

24 Q Okay.

25 It says Kelly and Gina are eligible to

1 receive compensation differential. What does -- what
2 was your understanding of what that meant,
3 compensation differential?

4 A That what we paid the loan officers in our
5 territory, if they were paid less than 140 basis
6 points, we would make that differential.

7 Q And Ms. Spearman, this may be a very basic
8 question to you; but understanding that, you know,
9 there are going to be people considering this dispute
10 who know nothing about the industry. Let me just ask
11 a very basic question.

12 Can you explain to me what -- what does BPS
13 mean?

14 A Basis points.

15 Q And basis points means what within the
16 industry? So it's 140 -- up to 140 basis points
17 for -- right? And --

18 A Uh-huh.

19 Q -- what does that mean? Translate that to a
20 lay person, if you could.

21 A Ya. It's a percentage. So it's a decimal
22 point percentage calculation to determine how much
23 commission that's generally based off the loan
24 amount.

25 Q Okay.

1 So the basis points is a -- it's a
2 percentage calculation based off of loan amounts?

3 A Yes.

4 Q Okay.

5 So, what was your understanding if someone
6 says when up to 140 basis points --

7 A Uh-huh.

8 Q -- is that up to 140 basis points on all
9 loans generated by loan officers?

10 A Yes.

11 Q Okay.

12 So whatever that number was, you would minus
13 the loan officer's compensation to determine the
14 compensation differential?

15 MS. GIBSON: Objection. Form.

16 THE WITNESS: Yes.

17 BY MR. PERLOWSKI:

18 Q Okay. Okay.

19 So, in the offer letter, in paragraph three,
20 it says, up to 140 BPS maximum; do you see that?

21 A Uh-huh. Yes.

22 Q And it says, on all self-generated loans and
23 house accounts. What is your understanding of what a
24 self-generated loan was?

25 A A self-generated loan would be a loan in

1 which the loan officer generated the lead or the
2 client.

3 Q Okay.

4 And what was -- what was your understanding
5 of what a house account was?

6 A A house account would be an account in which
7 management obtained the referral source; example,
8 builder account or a realtor account. And the loan
9 officer was given the opportunity to work the lead
10 from that account.

11 Q And then, so it talks about up to 140 --
12 up -- a differential of up to 140 basis points
13 maximum on self-generated loans and house accounts.

14 It also talks about, as well as 75 basis
15 points maximum on brokered loans compensation. What
16 was your understanding of what brokered loans
17 compensation meant?

18 A Brokered loans, as we discussed earlier, is
19 a loan in which the loan is being sent to a
20 third-party lender, in most cases for underwriting,
21 closing, funding, and servicing of the loan.

22 Q Generally speaking, is a brokered loan a
23 less attractive loan versus a non-brokered loan to a
24 company like NAF?

25 A Is less profitable.

1 Q That's -- okay.

2 Before you signed your offer letter and
3 Regional Manager Agreement, did you ever see
4 Ms. Allison's agreement?

5 A To my knowledge, prior to me signing my
6 agreement -- prior to me signing my agreement, I do
7 not recall seeing her agreement.

8 Q Do you recall discussing it with her?

9 A We certainly had conversations regarding
10 aspects of the compensation terms. I don't recall
11 specifically talking to her about the agreement.

12 Q Okay.

13 Tell me what you can recall before you
14 signed your offer letter and Regional Manager
15 Agreement. What conversations did you have with
16 Ms. Allison about compensation terms?

17 A What our split would be.

18 Q The 70/30 split?

19 A Yes.

20 Q What other compensation terms do you recall
21 discussing with Ms. Allison aside from the split
22 before you signed your offer letter and Regional
23 Manager Agreement?

24 A I remember, you know, discussing the
25 different buckets and how that would work.

1 Q Tell me what you can recall discussing with
2 Ms. Allison about the different buckets and how they
3 would work?

4 A We ran, you know, rough calculations on our
5 production and what that compensation might look
6 like.

7 Q Do you recall anything else that you
8 discussed with Ms. Allison about the buckets of
9 potential override bonuses other than the
10 calculations that you were running?

11 A I don't recall anything else.

12 Q What's your understanding of your
13 responsibilities as -- what were you hired to do?

14 A We were hired to open offices and grow
15 production in the Southeast for New American Funding.

16 Q At the time that you and Ms. Allison joined
17 NAF, what was the Southeast region when you joined?

18 A Their production was zero.

19 Q And then you brought teams of people who are
20 based in Georgia and South Carolina?

21 A Correct.

22 Q So initially, when you and she joined, the
23 Southeast region at NAF went from zero to Georgia and
24 South Carolina?

25 A Yes.

1 Q Were you -- were you given any parameters in
2 terms of growing the region, in terms of, for
3 example, where?

4 A There were seven -- six to eight states
5 discussed. The states of Georgia, South Carolina,
6 North Carolina, Alabama, Tennessee, Florida. And I
7 do believe Virginia was in that -- in the discussion.

8 Q Georgia, South Carolina and North Carolina,
9 Alabama, Tennessee, Florida, Virginia; does that
10 sound right?

11 A Yes.

12 Q To your knowledge, did NAF have a presence
13 in any of those states when you and Ms. Allison
14 joined?

15 A They had one individual in North Carolina.
16 And they had a branch in Orlando, Florida.

17 Q Were you given any direction in terms of
18 profitability expectations around the time you
19 joined?

20 A No.

21 Q Did you have an understanding that you were
22 being asked to run the regions profitably?

23 A Can you ask the question again?

24 Q Did you have an understanding that you were
25 being asked to run the region proper -- excuse me --

1 profitably?

2 A I don't remember them ever asking that. I
3 know, as a business person, that that is generally an
4 expectation.

5 Q So as regional manager, to whom did you --
6 you reported to Jon Reed directly?

7 A Yes.

8 Q What was your understanding of to whom
9 Ms. Allison reported?

10 A It was my understanding that she also
11 reported to Jon Reed.

12 Q And to who -- who reported to you when you
13 started? Just positions, not people.

14 A Branch managers, loan officers; but, you
15 know, loan officers technically reported to the
16 branch managers who, then, reported to us. We also
17 had marketing manager, production manager, training
18 manager that reported to us.

19 Q So the branch manager would be the person,
20 for example, if you have -- like you mentioned there
21 was a branch in Orlando, Florida. The branch manager
22 would be the lead person at that location?

23 A Yes.

24 Q And that person would report to you?

25 A Yes.

1 Q Okay.

2 And there are other positions like
3 marketing, production, that -- sounds like those
4 positions, marketing manager, production manager,
5 they're not location-specific, they're just
6 throughout the --

7 A That's correct.

8 Q -- their responsible -- their responsibility
9 is the entire region, right?

10 A That's correct.

11 Q Okay.

12 And those positions would report to you?

13 A Yes.

14 Q Okay.

15 How did the Southeast regions territory
16 change over time?

17 MS. GIBSON: Objection. Form.

18 BY MR. PERLOWSKI:

19 Q So, when you said when NAF started -- when
20 you started at NAF, you and Ms. Allison brought
21 Georgia and South Carolina to the proverbial table?

22 A Uh-huh.

23 Q You said there was one person, an individual
24 in North Carolina and a branch in Florida --

25 A Uh-huh.

1 Q -- right?

2 A Uh-huh. Yes.

3 Q Okay.

4 So, to your recollection, around the time
5 you started, do you recall any other locations within
6 NAF's Southeast region footprint other than what we
7 just discussed?

8 A Those are the only people that I recall
9 being in those states prior to us joining.

10 Q Okay.

11 When you left NAF in April of 2020 --

12 A Uh-huh.

13 Q -- where did NAF have a presence in the
14 Southeast region, state -- state -- let's just start
15 with states. I'm not getting more --

16 A Okay.

17 You want me to name the states?

18 Q Sure. Ya.

19 A Georgia, South Carolina, North Carolina,
20 Alabama, Florida, Tennessee. I cannot be certain if
21 there was anyone in Virginia when I left. There was
22 someone in Virginia during my tenure there.

23 Q Who was that person who was in Virginia at
24 some point during your tenure?

25 A I'm trying to think of his name. Daniel.

1 And I'm trying to think of his last name. I'll have
2 to come back to you on the last name.

3 Q If you remember --

4 A Okay.

5 Q -- as I said earlier, if you want to go
6 ahead and clarify, expand your testimony at any point
7 in time, please feel free to do so.

8 A Okay.

9 Q When, to your best of your recollection, was
10 Alabama -- when did NAF expand into Alabama?

11 A I'm trying to remember the date. We hired a
12 branch manager in Huntsville, that was our first
13 location in Alabama. If I had to guess, I would say
14 it was in 2018.

15 Q Did NAF expand in North Carolina besides
16 that one individual that you mentioned earlier?

17 A Yes.

18 Q Opened other branches in North Carolina?

19 A We did, yes.

20 Q Okay.

21 Do you recall when NAF expanded into
22 Tennessee?

23 A We hired a branch manager in Chattanooga in
24 2018.

25 Q Who was that?

1 A Janet Hillis.

2 Q Do you recall when NAF expanded into
3 Virginia?

4 A It was after Tennessee, but I cannot
5 remember the date.

6 Q Just as a -- just as a general view, if you
7 could just describe to me. Okay. So you mentioned
8 you expanded into Alabama by hiring a branch manager
9 in Tennessee.

10 What was the process to engage or recruit
11 for a branch manager in a location you were
12 interested in in expanding into? Just talk me out.
13 How did it work?

14 A Combination of ways; recruiter, in-house
15 recruiter, external -- external recruiters. Just
16 knowledge of people in the industry. Could be
17 current employees, former employees. Could be
18 business partners.

19 Q So, if an opportunity came up or either
20 through someone that works for you, you just hear it
21 on the street, or a recruiter contacts you, okay,
22 maybe an opportunity to expand into Birmingham,
23 Alabama. What, if at all, how would the Southeast
24 region work with corporate to look at that
25 opportunity?

1 A We would -- we would talk to the individual.
2 It was our responsibility -- excuse me -- to recruit
3 and business develop. So, we would speak to that
4 person and determine if they are a fit for our
5 organization. And then we would -- if we felt that
6 they were, then we would request an offer from HR.

7 Q So typically speaking, in terms of the
8 expansion into other territories -- when I say
9 corporate, I'm referring to N-A-F in Tustin,
10 California --

11 A Yes.

12 Q -- okay?

13 So corporate would typically get involved
14 when you wanted to make an offer?

15 A Yes.

16 Q In terms of sort of evaluating, you know,
17 whether that opportunity seemed to make good business
18 sense or not, you know, whether the person had a, you
19 know, sufficient book of business or potentially
20 might lead to a sufficient book of business, who is
21 doing that analysis, if anyone?

22 A At some point in my tenure, I don't recall
23 it being at the very beginning, and I don't recall at
24 what date it was implemented, but there was a
25 questionnaire that Kelly and I, along with the

1 internal recruiter, would complete some questions
2 regarding opening a branch in that location.

3 Q And that questionnaire would then go to
4 corporate?

5 A Yes.

6 Q Do you know to whom in corporate?

7 A The internal recruiter would handle a lot of
8 that, so I'm not exactly sure.

9 Q In terms -- you said you would request an
10 offer from HR. Did corporate have to formally
11 approve the issuance of the offer; to your
12 understanding?

13 A Yes.

14 Q Did either -- did NAF engage recruiters to
15 assist it in expansion efforts?

16 A We had an internal recruiter.

17 Q And was that internal recruiter based within
18 the Southeast region or was that internal recruiter
19 based in -- at corporate?

20 A He was based in California.

21 Q Did the Southeast region use any other --
22 use any external recruiting services in terms of
23 potential expansion opportunities?

24 A It was permissible to do so. I can't, at
25 the moment, remember a time in which we used one.

1 Q Okay.

2 So, in the -- in the process of adding a
3 branch, what I'm trying to ascertain is, what level
4 of involvement corporate had versus the region.

5 So it sounds like corporate may have been
6 involved in terms of the -- if the internal recruiter
7 was involved at all in the opportunity.

8 So corporate may have been involved if the
9 internal recruiter was involved in identifying an
10 opportunity, right?

11 MS. GIBSON: Objection. Form.

12 BY MR. PERLOWSKI:

13 Q You can answer.

14 A Corporate was involved in bringing on an
15 employee or a branch.

16 Q Okay.

17 How so -- how so?

18 A I would say they were approving it from a
19 financial standpoint.

20 Q Was that true throughout your tenure at NAF?

21 A Yes.

22 Q Okay.

23 Corporate would issue the offer, correct?

24 A Yes.

25 THE VIDEOGRAPHER: Excuse me.

1 Can we go off for one moment?

2 MR. PERLOWSKI: Sure.

3 MS. GIBSON: Ya.

4 THE VIDEOGRAPHER: The time is 11:56 a.m.,
5 we are off video record.

6 (Whereupon, a short break was taken.)

7 (Whereupon, a lunch break was taken.)

8 THE VIDEOGRAPHER: The time is 12:41 p.m.,
9 we are back on video record.

10 BY MR. PERLOWSKI:

11 Q Good afternoon, Ms. Spearman.

12 A Hello.

13 Q Let's just go back. Exhibit One is your
14 offer letter, Ms. Spearman. And I believe -- and
15 again, your testimony from before this morning will
16 speak for itself. I believe you said you didn't have
17 legal counsel assist you with this offer letter.

18 Did you read the entire offer letter before
19 you signed it?

20 A Yes.

21 Q And with respect to the Regional Manager
22 Agreement, which is Exhibit Two, did you read the
23 entire Regional Manager Agreement before you signed
24 it?

25 A To the best of my recollection, yes.

1 Q Okay.

2 Between the time that you received the
3 Regional Manager Agreement and the time that you
4 signed it, did you speak to anyone at N-A-F about any
5 of its terms?

6 A No.

7 Q Same question with respect to the offer
8 letter. Between the time you received it and the
9 time you signed it, did you speak with anyone at
10 N-A-F regarding its terms?

11 A I think I mentioned the non-solicit and the
12 COBRA --

13 Q Right.

14 A -- were the ones that I recall --

15 Q Okay.

16 A -- discussing with them.

17 Q Right.

18 You don't recall anything else other than
19 the non-solicit and the COBRA?

20 A I do not.

21 Q Okay.

22 And I apologize if I asked you this question
23 this morning, I just don't remember the answer.

24 Do you remember who at N-A-F you spoke to
25 about the non-solicit and the COBRA?

1 A I believe on the non-solicit, I spoke to
2 Christy Bunce.

3 Q Okay.

4 A And that was jointly, Kelly and I, probably
5 both speaking to her about that.

6 Q Were the discussions about the non-solicit
7 just concerns about what you could and couldn't do?

8 A We were bringing 100 people.

9 Q Yes.

10 A So, our question was ensuring that those
11 people were not subject to the non-solicit, since we
12 had brought them.

13 Q Okay.

14 Do you remember who -- with whom you
15 discussed the COBRA issue?

16 A Someone in HR. I cannot recall who.

17 Q It looks like the offer letter on N-A-F's
18 part is a Katie Traviglia? I'm probably botching the
19 pronunciation of the last name.

20 A Uh-huh.

21 Q T-r-a-v-i-g-l-i-a.

22 A Uh-huh.

23 Q Does that ring a bell in terms of who you
24 may have spoken with about the COBRA issue?

25 A I do not remember.

1 Q Okay.

2 When did you start with Movement Mortgage?

3 A September 30th, 2020.

4 Q Okay.

5 A It's either September 30th or October 1st.

6 Q Okay.

7 When did you receive an offer from Movement
8 Mortgage?

9 A In the weeks prior to that. I don't
10 remember the specific date.

11 Q Did you have any form of employment between
12 the time that you left NAF and joined Movement
13 Mortgage?

14 A No.

15 Q Had you spoken to any other companies about
16 the possibility of leaving NAF before you resigned?

17 MS. GIBSON: Objection. Form.

18 THE WITNESS: Can you repeat the question?

19 BY MR. PERLOWSKI:

20 Q Sure.

21 Before you left NAF, did you interview with
22 any other companies in the industry about joining
23 them -- about the possibility of joining them?

24 A Yes.

25 Q Which ones?

1 A I don't know that I would consider it
2 interviewing, but I did talk to other companies, just
3 to see what, you know, what was available in the
4 marketplace.

5 Q Which companies do you recall talking to
6 about seeing what was available in the marketplace?

7 A A company called Cardinal.

8 Q Okay.

9 Any others? And this is before you left
10 NAF.

11 A We did -- I did talk to Movement.

12 Q Before I ask some follow-up questions, any
13 others besides Cardinal and Movement that you spoke
14 to before you left NAF about the possibility seeing
15 what else was available in the industry?

16 A No.

17 Q Do you recall when you had a conversation
18 with Cardinal?

19 A I don't. It was after the leadership
20 meeting in 2019 in which it was disclosed to us of
21 the misallocation of \$30 million. And that they
22 would be looking to change our compensation, change
23 our original 2016 agreement.

24 Q Okay.

25 A I can't remember the month.

1 Q Sure.

2 So, leadership meeting, I think we -- I
3 think you mentioned -- although, I think you also
4 qualified that you're not exactly sure -- February
5 of '19 or so?

6 A Yes.

7 Q So you resigned on -- in April of '20?

8 A Yes.

9 Q So, roughly, 13, 14 months between the
10 leadership meeting and when you resigned?

11 A (Nods head.)

12 Q Do you recall when you talked to Cardinal
13 relative to that 13, 14-month time difference between
14 the leadership meeting and your resignation?

15 A It was some time in 2019. Mid to late 2019.

16 Q Did you interview with Cardinal?

17 A I would not consider it to be an interview.

18 Q How many -- did you have more than one
19 conversation with Cardinal?

20 A I only had one conversation.

21 Q With whom?

22 A I do not recall his name. Something I could
23 easily obtain.

24 Q Do you recall his position? You can't
25 recall the name. Do you recall the position of the

1 person you talked to?

2 A I believe he was the COO.

3 Q The conversation that you had with the
4 individual at Cardinal, was this an in-person or
5 telephone?

6 A In-person.

7 Q Where was it?

8 A I believe -- they have -- I believe it was
9 in Charlotte.

10 Q Is that where Cardinal's headquarters is
11 based?

12 A I think they have more than one, but they
13 have an office there.

14 Q Who attended that meeting?

15 A Myself and Kelly.

16 Q Anyone else on NAF's side besides yourself
17 and Kelly?

18 A Not to my knowledge.

19 Q And just for the purpose of the record, when
20 you're talking about Kelly, you're referring to Kelly
21 Allison?

22 A Yes.

23 Q Okay.

24 A Ya.

25 Q And that's fine. We can refer to her as

1 Kelly, Ms. Allison, whatever works for you. I just
2 want to make sure, months down the road, when someone
3 else is reading it, that it's clear.

4 A Understood.

5 Q Did you receive an offer from Cardinal?

6 A No.

7 Q Other than the in-person meeting with the
8 individual that you mentioned, who you think is the
9 CEO -- the COO, did you have any other discussions
10 with Cardinal about the prospect of joining Cardinal?

11 A We were curious about companies that paid
12 based on a profit and loss model. So, that was
13 really our primary -- or my primary motivation in
14 speaking to them, to understand a little bit more
15 about that compensation model.

16 Q And did you understand that Cardinal paid on
17 a P and L model?

18 A Yes.

19 Q How -- what was the source of that
20 understanding?

21 A Recruiters and people from other companies
22 routinely reach out to top producers in the industry,
23 like Kelly and myself. So, I don't remember
24 originally how I would come to know that information.
25 I just knew.

1 Q Okay.

2 Did anyone attend the meeting for Cardinal
3 aside from the individual that you were referring to,
4 the male who you think may have been the COO?

5 A They did have some other teammates in and
6 out of the meeting, just showing their platform.

7 Q Was the meeting with Cardinal on your
8 calendar?

9 A I don't recall.

10 Q And by, on your calendar, just as a frame,
11 my -- the only calendar I personally keep is what's
12 on my phone, my Outlook. My calendar is what's on my
13 Outlook --

14 A Right.

15 Q -- I don't keep a paper calendar. I'm using
16 the term calendar to refer to both electronic or a
17 paper calendar. Do you recall if that meeting might
18 have been on a calender --

19 A I don't recall.

20 Q -- so we can place it in time?

21 A I don't recall if I placed it on a calendar.

22 Q Okay.

23 And you said you also talked to Movement
24 before you left NAF?

25 A Yes.

1 Q Do you recall when you first talked to
2 Movement about the possibility of -- or about options
3 with Movement?

4 A January or February of '20.

5 Q Were those discussions with Movement in
6 person or by telephone?

7 A There was an in-person meeting.

8 Q Where was that?

9 A Charlotte.

10 Q And who attended that in-person meeting at
11 Charlotte?

12 A Several people from Movement.

13 Q How about, was it just yourself or did
14 Ms. Allison attend as well?

15 A Kelly attended as well.

16 Q Do you recall with whom you met at Movement?

17 A Several members of their management team.

18 Q Did -- so this meeting was in January,
19 February?

20 A Uh-huh.

21 Q Did you have any other meetings or
22 discussions with Movement before you left NAF,
23 understanding that you joined Movement in the fall
24 of '20?

25 A Right. I did not have any other

1 communications with Movement prior to leaving NAF.

2 (Whereupon, Defendant's Exhibit Number Three
3 was marked for identification.)

4 BY MR. PERLOWSKI:

5 Q Ms. Spearman, I'm going to show you what's
6 been marked as Exhibit Three. I will represent to
7 you that Exhibit Three might -- can you hand me that
8 back, please?

9 A (Document tendered.)

10 Q There might be an extra page on there. Let
11 me see. Ya. It looks like the last page was printed
12 twice. Yep. Just going to take the last page off,
13 because it appears to have been printed twice.

14 Ms. Spearman, I'm showing you what's been
15 marked as Exhibit Three, which is an email of April
16 13th of 2020 from yourself; do you recognize that
17 email?

18 A Yes.

19 Q Okay.

20 Ms. Spearman, I'll also represent to you
21 that the spreadsheet on the last page, the
22 spreadsheet that is attached to the email; do you
23 recognize this spreadsheet?

24 A Yes.

25 Q Okay.

1 Prior to April 13th of 2020, Ms. Spearman,
2 did you tell anyone at NAF that you were resigning?

3 A My husband.

4 Q Another -- throughout the deposition today,
5 if I -- and I recognize I asked an open-ended
6 question, did you tell anybody. I'm not going to ask
7 you about any conversation that you may have had with
8 your husband. Those are typically private
9 conversations between spouses are typically protected
10 from the marital privilege.

11 A Uh-huh.

12 Q So I'm not going to go and ask about any
13 conversations that you had with your husband, okay?

14 A (Nods head.)

15 Q So, other than your husband, did you -- let
16 me ask a better question: Did you tell anyone at NAF
17 that you were considering resigning?

18 A I told Kelly.

19 Q When?

20 A I discussed it with her the day before.

21 Q Did you tell her that you were resigning or
22 that you were considering resigning?

23 A I told her I was strongly considering
24 resigning.

25 Q Did you tell her why?

1 A Yes.

2 Q What'd you tell her?

3 A I told her that based on the fact that we
4 had not been paid as agreed since our 2016 agreement,
5 along with the changes to how they paid us in 2019,
6 and moving to the new compensation that we signed in
7 March of 2020, that I was not comfortable with the
8 stability of the company nor the transparency of the
9 P and L platform that would be used to calculate our
10 income.

11 Q So if I understand what you just said
12 correctly, and please correct me if I'm wrong, the
13 March of 2020 contract amendment was a change to go
14 to the P and L model?

15 A Yes.

16 Q And you signed that March of 2020 amendment?

17 A Yes.

18 Q And you had legal counsel assist you with
19 that March of 2020 amendment, Mr. Watson?

20 A Yes. He reviewed the draft of the
21 agreement, the new agreement. He reviewed our 2016
22 agreement and the March 2020 agreement.

23 Q Did you engage an accountant at all to help
24 you understand the P and L model?

25 A I did not engage a CPA.

1 Q Ms. Allison --

2 A Yes.

3 Q -- engage a CPA?

4 A Yes.

5 Q Okay.

6 Did -- do you recall the name of that CPA?

7 A I do not.

8 Q Do you recall the company the CPA was with?

9 A I do not.

10 Q Okay.

11 Did you participate in any discussions
12 with -- sorry -- CPA, male or female?

13 A Female.

14 Q Okay.

15 Do you recall being in any discussions with
16 the CPA and Ms. Allison about the P and Ls?

17 A Other than what was discussed at the
18 meeting, where the CPA was present, I had no other
19 conversations with that CPA.

20 Q And the meeting that you're referring to is
21 the meeting in the fall of '19 with Mr. Frommert,
22 Mr. Reed, and Mr. Watson?

23 A That is correct.

24 Q Okay.

25 Was your last day with NAF April 13th of

1 2020?

2 A Yes.

3 Q Why did you resign immediately?

4 A I don't understand the question.

5 Q Did you consider giving notice?

6 A I think I have referenced here. Can I take
7 a moment to read this?

8 Q Of course.

9 And feel free to read the entire email. I'm
10 just referencing the first sentence where it says
11 you've elected to resign. And then at the end it
12 says, effective immediately. So that's where I'm
13 going with this.

14 MS. GIBSON: Go ahead and read the entire
15 thing.

16 THE WITNESS: Yes.

17 I state in my resignation I am willing
18 to assist with any transition needs that are in
19 the best interest of the NAF Southeast team,
20 customers, and referral partners. Please provide
21 guidance as how you would like to address the
22 logistics.

23 It is customary in our industry, when
24 you are tied to production, that there is no
25 notice. Typically, even if you provide notice,

1 you're terminated immediately.

2 BY MR. PERLOWSKI:

3 Q To cut off the continuing compensation
4 associated with production?

5 A I guess that could be part of it. I think
6 it's probably the communication and connection to the
7 employees and referral partners.

8 Q Sure.

9 Did you ever prepare any projections as to
10 what you thought you would make under the P and L
11 model in 2020?

12 A No.

13 Q Did you have any understanding, one way or
14 the other, about whether the change in the P and L
15 model was likely to result in an increase or decrease
16 in your compensation?

17 A Did I have any understanding of that?

18 Q Uh-huh.

19 A The only understanding I had was from what
20 Scott Frommert would have indicated. He may have
21 even prepared something that showed, you know, a low,
22 high -- a low, mid, high type of compensation. So,
23 the only thing I knew was what he would have
24 prepared.

25 Q Do you recall how much you made in

1 compensation from NAF in 2019, approximately?

2 A Approximately, a million dollars.

3 Q How about in '18?

4 A About the same.

5 Q How about in '17?

6 A I do not recall.

7 Q Is it fair to say your compensation in '18
8 and '19 were fairly similar?

9 MS. GIBSON: Objection. Form.

10 But you can answer.

11 THE WITNESS: I don't recall what I made in
12 '18.

13 BY MR. PERLOWSKI:

14 Q I think you said, approximately, a million.

15 A I'm sorry. I don't remember -- what was
16 your question?

17 Q Sorry.

18 Your '18, '19 comp -- from your prior
19 testimony --

20 A Yes. Yes.

21 Q -- it sounds like they were around the same;
22 so, relatively stable?

23 A Yes.

24 Q Okay.

25 A However, we did much more production in '19

1 than '18.

2 Q Okay.

3 The region did more production?

4 A Yes.

5 Q So, on April 13th of 2020, did you have any
6 understanding about whether you thought your
7 compensation would be more than a million in '20,
8 less than a million?

9 A Because it was based off of profitability
10 that we -- I did not have transparency to how that P
11 and L was calculated or formulated, I didn't believe
12 I had any indication of what I would make.

13 Q Were there specific aspects of the P and L,
14 as of April of 2020, that you believe you didn't have
15 transparency into?

16 A All of it.

17 Q Did you receive -- did you regularly receive
18 financial statements for your region?

19 A Not on a regular basis. It was provided --
20 there was a form of a P and L or financial provided
21 to us from time to time.

22 Q By whom?

23 A Jon Reed.

24 Q When did Mr. Reed leave NAF; if you know?

25 A He left shortly after the February '19

1 leadership meeting, in which all the SVP regionals'
2 compensation was reduced.

3 Q Who -- and who replaced Mr. Reed?

4 A They did not replace him, to my knowledge.

5 Q To whom did you report after Mr. Reed left?

6 A Jan Preslo.

7 Q Did you report to Ms. Preslo up through your
8 resignation or did that ever change?

9 A I believe I continued to report to her.

10 Q Did Ms. Allison also report to Ms. Preslo?

11 A Yes.

12 Q Did you ever ask NAF, anyone at NAF for
13 additional information regarding the P and Ls that
14 you did not receive?

15 A Can you ask that again?

16 Q Sure.

17 Did you ever ask anyone at NAF for
18 additional information regarding the P and Ls that
19 you, then, did not receive?

20 A So your question is if I didn't receive a
21 financial, did I ask anyone for one?

22 Q No.

23 My question is: Did you ever ask for
24 information about the P and Ls from NAF that you,
25 then, did not receive?

1 A I see.

2 Q So, did you ask for X and then you didn't
3 get X?

4 A I did not ask for --

5 Q Who did?

6 A I'm just saying I did not ask.

7 Q Okay.

8 So you don't recall asking anyone at NAF for
9 any additional information regarding the P and Ls?

10 A We were not paid based off of a P and L.
11 So, I was told by Jon Reed and Christy Bunce, on
12 many, many occasions, that our region was very
13 profitable and they were very happy with our
14 performance. I don't recall asking any other
15 questions.

16 Q Okay.

17 So I understand, again, Mr. Reed left in --
18 shortly after the leadership meeting?

19 A Uh-huh.

20 Q And you were talking about going to a P and
21 L model --

22 A Uh-huh.

23 Q -- which apparently was, at least, reflected
24 in the March 2020 amendment?

25 A Yes.

1 Q So, during the time that there were
2 discussions about moving to a P and L model --

3 A Uh-huh.

4 Q -- up to and including the entry into the
5 March of the 2020 amendment --

6 A Uh-huh.

7 Q -- did you ever ask for any additional
8 information regarding the P and Ls?

9 A We asked for information as it related to
10 what the -- you know, the draft of the March 2020
11 agreement and the supporting draft P and L; meaning,
12 it wasn't current active information -- live
13 information. It was proposed.

14 So, we did ask clarification questions about
15 how the P and L would work and those sorts of things.

16 Q Okay.

17 You used the word, we, in your last answer;
18 are you referring to yourself and Ms. Allison?

19 A Yes.

20 Q Okay.

21 So, did you personally ever ask for any
22 additional P and L-related information from NAF in
23 connection with this move to a P and L compensation
24 model?

25 A (No response.)

1 Q You, personally.

2 A I can't point to a specific example or date
3 or anything, but we had questions.

4 So my assumption would be at some point, I
5 probably asked a question about the new compensation
6 model.

7 Q To whom?

8 A There were -- you know, fairly routine calls
9 with Jan, Jon, before he left, and Scott Frommert
10 about the new compensation plan. So, the questions
11 would have most likely gone to one of those three or
12 all three.

13 Q Do you recall any specific questions that
14 you may have asked about the new compensation plan to
15 either Ms. Preslo, Mr. Reed, or Mr. Frommert?

16 A I remember asking about detail -- details of
17 how we would see invoices for expense line items.

18 Q What were you told?

19 A We were told that because the P and L was in
20 its infancy stage, that they didn't have the
21 technology to be able to, you know, look at the line
22 item, click on it, and the supporting documentation
23 reveal itself. We would have to ask accounting for
24 any proof and they would have to manually send us
25 documents.

1 Q Okay.

2 If you can, look at the spreadsheet. And I
3 want to be careful, Ms. Spearman, again, I want to
4 remind you, I'm not asking you to reveal any
5 attorney/client privilege communications in
6 connection with this line of questioning, okay?

7 A Okay.

8 Q Did you personally compile the spreadsheet,
9 the information on this spreadsheet?

10 A I personally compiled the information on
11 this spreadsheet.

12 Q Did anyone assist you?

13 A No.

14 Q How did you compile -- how did you go about
15 compiling the information on the spreadsheet, just
16 the process, how did you do it?

17 A So each month, the overrides were calculated
18 on a spreadsheet by corporate to arrive at our
19 compensation. And so, I took the excluded volume
20 from each month's spreadsheet and added it to this
21 compilation.

22 Q Are you -- were you referring to the monthly
23 recaps in your prior answer?

24 A Yes.

25 Q So you took information off of the monthly

1 recaps from the -- from excluded portions on the
2 monthly recaps and created the spreadsheet using that
3 data?

4 A Yes.

5 Q Okay.

6 And you were trying to be accurate when you
7 put the spreadsheet together?

8 A Yes.

9 MS. GIBSON: Objection. Form.

10 THE WITNESS: Definitely. Yes.

11 BY MR. PERLOWSKI:

12 Q And you were trying to capture what you
13 contended you were owed by N-A-F as of April of 2020,
14 when you were preparing this spreadsheet?

15 A Yes.

16 Q So, just walking through the columns. So,
17 excluded volume, does that mean loan volume that was
18 excluded from your compensation?

19 A Yes.

20 Q Is that from the override bonus portion of
21 your compensation?

22 A Yes.

23 Q Okay.

24 And the excluded dollars in the next column,
25 that's just a formula off of excluded volume?

1 A Yes.

2 Q Okay.

3 So let's look at the marketing deduct
4 column. Tell me what that reflects.

5 A After the February 2019 meeting, we were
6 informed because of the \$30 million misallocation by
7 NAF, that they would no longer pay for marketing
8 costs that they had paid prior. That we would be
9 responsible for all marketing costs, because the
10 company was struggling financially.

11 So, they began to have a line item on that
12 monthly recap of the marketing expenses that they had
13 paid on behalf of our region. So I took the number
14 off of the monthly recap that was deducted from our,
15 mine and Kelly Allison's, compensation.

16 Q Okay.

17 So after the February '19 leadership
18 meeting, the Southeast region would continue to
19 receive invoices from vendors for marketing expenses,
20 right?

21 A Yes.

22 Q What would happen to those invoices?

23 A Some of them went directly to corporate and
24 some were submitted to corporate for payment.

25 Q Okay.

1 So corporate would pay the expenses to the
2 vendor?

3 A Yes.

4 Q And then, whatever was paid to the vendor
5 would come off the top from the region?

6 A So, it was a deduction from our override
7 bonuses, essentially, or our compensation. So, yes,
8 they lumped it all together and put it on the
9 spreadsheet as a marketing -- I'm so sorry. Are we
10 talking about PEs or marketing?

11 Q Marketing.

12 A Okay.

13 They would list it as a marketing deduction
14 on the -- over on the monthly recap.

15 Q Okay.

16 A A lump sum.

17 Q Lump sum?

18 A Uh-huh.

19 Q And to your understanding, the policy change
20 around the time of the leadership meeting, that was
21 companywide?

22 A Yes.

23 Q In other words, it wasn't specific to the
24 Southeast region?

25 A I was told it was to all the other regions

1 as well.

2 Q Okay.

3 And so -- just so I'm clear, so the
4 marketing deduct reflects for each month from
5 March '19 through February of '20, that reflects the
6 number shown on the monthly recap?

7 A Yes.

8 Q Okay.

9 So then you total it and then you multiple
10 that by .3, which is your share of the split with
11 Ms. Allison?

12 A That's correct.

13 Q Okay.

14 So the PE deduct column, let's go to that
15 one. Let -- let me just ask the base -- the basic
16 question again. In dreaded lay person's terms, what
17 is a pricing exception?

18 A A pricing exception is -- becomes necessary
19 in a situation in which a loan is being locked in at
20 an interest rate that is a cost to the company to
21 secure that rate.

22 Q When you say, a rate that is a cost to the
23 company, does that mean a rate that renders the loan
24 unprofitable?

25 A Not necessarily. Because there could be a

1 pricing exception on a loan in which the company is
2 having to pay something for that interest rate and
3 the loan could still be profitable.

4 Q Okay. So -- sorry. This just may be a lack
5 of industry understanding on my part.

6 But -- so you said the loan is locked in at
7 a rate that is a cost to the company, what do you
8 mean, by a cost to the company?

9 A There's a rate sheet that is published daily
10 that gives the interest rates and their corresponding
11 cost. So, the lower rates are going to have a cost
12 associated with obtaining that rate in the secondary
13 market. There'll be a rate close to par, meaning no
14 cost, no -- no payback. And then there will be
15 higher interest rates that would actually pay the
16 lender back something in the secondary market.

17 Q Okay.

18 So, the lower the rate, the more likely
19 there would be a cost to the company?

20 A Yes.

21 Q Okay.

22 So, prior to the February '19 leadership
23 meeting, did loan officers have to get any kind of
24 approval to -- to sell a loan that had a pricing
25 exception associated with it?

1 A Yes.

2 Q What was that process?

3 A The loan officer would send the pricing
4 exception request to Kelly Allison and she would
5 approve or deny. And the company would cover that
6 cost in the vast majority of cases.

7 Q So if she approved, you said the company
8 would, then, cover the cost in the vast majority of
9 cases?

10 A Correct.

11 Q What do you mean by the company would cover
12 the cost?

13 A Meaning our compensation overrides were not
14 impacted.

15 Q You said in the vast majority of cases, but
16 were there instances where the company did not cover
17 the cost?

18 A There were very, very few instances in which
19 they would not cover the cost because of the large
20 amount. And managers could agree to waive their
21 override for those unusual circumstances.

22 Q And why would a manager agree to waive their
23 override? Just typically.

24 A Could be just, obviously, market
25 competition. Could be for --

1 Q I'm sorry. I got distracted because the
2 microphone was about to fall off my tie.

3 A Got it.

4 Are we good?

5 MR. PERLOWSKI: Could you read that answer
6 back for me?

7 (Whereupon, the court reporter read back the
8 answer "Could be just, obviously, market
9 competition. Could be for --")

10 BY MR. PERLOWSKI:

11 Q Okay.

12 So, if there is going to be a pricing
13 exception before the leadership meeting, where there
14 was a -- going to be a cost to N-A-F, the loan
15 officer had to get approval to make that loan?

16 A Yes.

17 Q Okay.

18 And that approval would typically go in the
19 Southeast region and would go to Kelly Allison?

20 A That's right.

21 Q Did it ever go to you?

22 A I may have been copied at times.

23 Q How about in terms of making, up or down,
24 decision on the loan, did you ever have to do that?
25 This is before the leadership meeting.

1 A Right. Rarely. Only if Kelly was going to
2 be out for an extended amount of time.

3 Q But obviously, if there's -- if Ms. Allison
4 were to choose to deny the request, then the loan's
5 not made, right?

6 A That's correct.

7 Q And there's no compensation for anyone on
8 that loan?

9 A That's right.

10 Q Because it's not made, right?

11 A That's correct.

12 Q Okay.

13 So, after February of '19, did the process
14 with respect to pricing exceptions change?

15 I'm not talking about the compensation
16 impact. I'm talking about, did the process of
17 dealing with the pricing exception change?

18 A Not to the loan officer. For the loan
19 officer, it was the same.

20 Q So after the leadership meeting and the
21 change was announced that NAF was not going to cover
22 the cost of pricing exceptions, did the loan officer
23 still have to seek approval for the pricing exception
24 request?

25 A Yes.

1 Q And that -- within the Southeast region, did
2 that approval still go to Kelly Allison?

3 A Yes.

4 Q Typically, was Kelly Allison the person who
5 would either approve or deny the pricing exception
6 request?

7 A Yes.

8 Q After -- so, Ms. Allison was approving the
9 pricing exception request after February of '19. Is
10 it fair to say that she did so knowing that that cost
11 was going to come off -- come out of the region's
12 reconciliation?

13 A She knew that they had implemented this new
14 policy. And that their expectation was that we
15 would -- they were expecting us to participate in the
16 pricing exception. They did state, at that meeting
17 in February of 2019, that this was temporary. And
18 they believed it would be for a period of 90 days,
19 that they needed some help in solving their financial
20 challenges, due to the \$30 million in misallocated
21 funds.

22 Q Okay.

23 So, just -- I'm just going to give it --
24 just give an example using a round number,
25 recognizing the example may not make real whole

1 sense, but just bear with me.

2 So let's just say that in April of '19,
3 Ms. Allison is presented with a pricing exception
4 request from a loan officer, right?

5 A Yes.

6 Q So, whatever that cost -- so then that cost
7 to N-A-F, whatever that number is, let's just say the
8 cost is \$10,000, just for the sake of easy math.
9 That cost was going to come out of or be absorbed by
10 the region and impact both yours and hers
11 compensation, right?

12 A Yes.

13 Q So, given that Ms. Allison was being asked,
14 if she was going to be asked to approve a pricing
15 exception?

16 A Yes.

17 Q And again, I'm talking about April of '19,
18 after the change is announced --

19 A Uh-huh.

20 Q -- did she ever confer with you about
21 whether to approve the pricing exception, because if
22 she did, she was impacting your bottom line?

23 A Obviously, the change to our compensation
24 for marketing and pricing exceptions was a shock to
25 us. Because obviously, it's very different from what

1 had happened prior to the meeting.

2 We were very much not in agreement with the
3 policy, but we had 200 loan officers at that point,
4 that had trusted us to come to New American Funding
5 and conduct business. So, I believe that she felt
6 that we didn't have a choice but to continue to
7 approve pricing exceptions that we had prior to the
8 meeting for the fear of loss of business, partners,
9 and loan officers.

10 Q And I very much appreciate that. That
11 wasn't my exact question.

12 My question was: Did she ever confer with
13 you about whether to make a pricing -- to whether to
14 approve a pricing exception or not, because if she --
15 by doing so, by approving, she was, in effect, taking
16 money out of your pocket?

17 MS. GIBSON: Objection. Form.

18 BY MR. PERLOWSKI:

19 Q Did she ever confer with you about whether
20 to grant a pricing exception or not after the policy
21 change?

22 A I didn't view it as her taking money out of
23 my pocket. I viewed it as NAF making a unilateral
24 decision. So, you know, she didn't confer with me on
25 specific exception by exception, when they were

1 submitted; but I do believe she and I were in
2 alignment that we didn't have a choice, the policy,
3 you know, was put upon us. We were told that our
4 agreements were going to be amended accordingly and
5 they were not.

6 So, I believe that she probably thought that
7 I would support her decision in that, you know, given
8 that it was protecting our overall book of business;
9 but she did not confer with me on each individual
10 pricing exception.

11 Q Did she confer with you on a macrolevel, not
12 a microlevel, on a per loan level, but did she confer
13 with you on a big picture level as to whether to
14 continue approving pricing exceptions as you
15 historically had-- or as she historically had?
16 Excuse me.

17 A On a macrolevel, yes, I would say she did
18 confer with me. And that we were in agreement with
19 this -- this was for a period of 90 days. We were
20 continuing to have discussions with corporate, that
21 we were not okay with this policy.

22 So, I would say on a macrolevel, yes, she
23 conferred with me, that we didn't have a choice, but
24 to continue doing business as we had prior.

25 Q Okay.

1 Did you and Ms. Allison ever discuss the
2 possibility that you just were going not -- that the
3 region was just not going to approve pricing
4 exceptions, just say no to all of them?

5 A That would have been -- no. That would have
6 been absolutely catastrophic and detrimental to our
7 business.

8 Q Because the loan officers would not have
9 been able to make a sufficient number of loans?

10 A Because -- yes. Correct.

11 Q Just -- just ballpark, what percentage of
12 loans fell within the pricing exception category?

13 MS. GIBSON: Objection. Foundation.

14 BY MR. PERLOWSKI:

15 Q Ballpark.

16 Like a total number of loans, what
17 percentage of loans were approved with a pricing
18 exception? Ballpark.

19 A I don't have that data.

20 Q Do you have an estimate?

21 MS. GIBSON: Asked and answered.

22 BY MR. PERLOWSKI:

23 Q I recognize you don't have the data, but do
24 you have an estimate?

25 A I don't have an estimate without --

1 Q Okay.

2 A -- looking at documentation.

3 Q Okay.

4 You said that you were told that the policy
5 was going to be -- tell me -- tell me what you were
6 told about the 90 days. I want it as specific as you
7 can remember it.

8 A Uh-huh.

9 We were told that -- Kelly and I were told
10 that we -- they were going to have to make some
11 significant cuts due to their financial problems and
12 the misallocation of the \$30 million. And that they
13 were going to need our help for a 90-day period to
14 right the ship.

15 Q Who told you that?

16 A In the meeting was Christy Bunce, Jon Reed,
17 and I'm pretty certain Jan Preslo was in the meeting;
18 but that evening, at dinner, and in the coming weeks
19 after that, Patty Arvielo, on multiple occasions,
20 told us, don't worry, this is just for 90 days.

21 Q Who told you that in the meeting? You said
22 that we needed to make significant -- that there
23 was -- they needed help for 90 days to right the
24 ship; who said that?

25 A I believe they all said it. All three of

1 them.

2 Q Meaning Ms. Bunce, Mr. Reed, and Ms. Preslo?

3 A Yes.

4 Q Okay.

5 Did you ever see the 90 days, like the
6 change in the policy with respect to pricing
7 exceptions, did you ever see that 90 days in writing
8 anywhere?

9 A No, because they didn't really put out a
10 policy change.

11 Q After 90 days had passed, did you ever
12 contact anyone and said, is this going to be changed
13 back?

14 A Yes. There was much conversation verbally;
15 conference calls, in person. Rick and Patty actually
16 came to Atlanta to meet with us, to assure us this
17 was temporary. And every time we asked, we were told
18 that they were hiring a CFO to satisfy, you know, and
19 clear up their financial issues. And that we were
20 working on a new comp plan that would rectify and
21 address everything.

22 Q And that was the comp plan that was put into
23 effect in March of '20?

24 A Right. A year -- little over a year later,
25 yes.

1 Q Okay.

2 (Whereupon, Defendant's Exhibit Number Four
3 was marked for identification.)

4 BY MR. PERLOWSKI:

5 Q Ms. Spearman, I'm going to show you what's
6 been marked as Exhibit --

7 A Can we -- can we just -- I want to take my
8 jacket off, too.

9 Q Oh, please. Of course.

10 Ms. Spearman, I represent to you
11 Exhibit Four is your interrogatory responses that you
12 served on July 12th. And I just want to jump to
13 Page 6. And the -- interrogatory is the --
14 apparently, lawyers need a fancier word for
15 question --

16 A Right.

17 Q -- question, right, so that's what
18 interrogatory is.

19 Interrogatory number five talks about
20 pricing exceptions. And I want to ask you something
21 about your answer, just so I -- just so I make sure I
22 understand it.

23 A Okay.

24 Q So, in your answer, it's about halfway down
25 the page, it says, Plaintiff explains that initially

1 upon hire, she received compensation for the pricing
2 exceptions granted on loans made by loan officers
3 that were within N-A-F's stated tolerance; do you see
4 that?

5 A Yes.

6 Q Okay.

7 So, first of all, tell me, you said you
8 received compensation for the pricing exceptions,
9 what do you mean by that?

10 A Meaning pricing exceptions were not deducted
11 from our compensation as long as they fell within a
12 certain tolerance.

13 Q Okay.

14 So it's not like you received additional
15 compensation for pricing exception, you just didn't
16 receive it, you didn't just have to absorb the cost
17 of that pricing exception?

18 A Correct.

19 Q Okay.

20 And you said within a stated tolerance.

21 A Uh-huh.

22 Q Do you recall what the stated tolerance was?

23 A I believe it was up to 300 basis points.

24 Q And that was the stated tolerance around the
25 time of your hire?

1 A Yes.

2 Q Do you recall whether that stated tolerance
3 changed at any time before the leadership meeting
4 from up to 300 basis points?

5 A Not to my knowledge.

6 Q Do you recall whether that stated tolerance
7 was in any kind of like written policy or document of
8 any kind?

9 A There was a policy on, you know, the process
10 for approving pricing exceptions; but as far as the
11 tolerance, I can't say that I've ever seen a policy
12 document.

13 There may have been an email, in which they
14 told Kelly what the tolerances were; but that's
15 definitely what was verbally discussed and that's
16 what took place until February of 2019.

17 Q As a product of the discussions at the
18 February leadership meeting, was it your
19 understanding that the change with respect to pricing
20 exceptions, was your understanding that that applied
21 companywide?

22 A They had a private meeting with each
23 regional manager, so I can't speak to what actually
24 happened with the other regions, but they did tell us
25 that it was applicable to all the regions.

1 Q Who told you that it was applicable to all
2 regions?

3 A Christy, Jan, and Jon.

4 And then we all went to dinner that night.
5 So, pretty much every regional was upset, so I think
6 it probably applied to everybody.

7 Q So the discussion wasn't you need to just --
8 you and Ms. Allison, the discussion about absorbing
9 pricing exceptions was -- that was being had in front
10 of other regions as well?

11 A I believe so.

12 Q And the dinner that you're referring to was
13 a dinner that members from other regions attended as
14 well?

15 A Yes.

16 Q Okay.

17 Where was that dinner, if you remember?

18 A I cannot recall. It was in -- it was near
19 Tustin, the Tustin office.

20 Q On the next page, Page 7, and this is,
21 again, about halfway down the page, it says, while
22 the tolerance was cut in half by Defendant; what do
23 you mean by that?

24 MS. GIBSON: Feel free to read as much of
25 the paragraph as you want.

1 THE WITNESS: Okay.

2 MR. PERLOWSKI: Absolutely.

3 THE WITNESS: This is in response to the
4 same number five?

5 MR. PERLOWSKI: Yes.

6 THE WITNESS: Okay.

7 So, the prior toler -- prior to 2000 --
8 February 2019, the tolerance was 300 basis
9 points. They reduced it to 100 basis points. So
10 it was cut by more than half what they were
11 expecting us to absorb.

12 BY MR. PERLOWSKI:

13 Q Okay.

14 So, explain the difference to me. So you
15 said it was -- the tolerance was changed from up
16 to -- okay. So, let me make sure I understand that.

17 So previously, the tolerance was up to 300
18 basis points?

19 A (Nods head.)

20 Q So, if it was over 300 basis points, you
21 don't make the loan?

22 A It would have to go to someone else for
23 approval.

24 Q Okay.

25 So, Kelly couldn't approve it?

1 A (Nods head.)

2 Q It had to go up the food chain, so to speak?

3 A Yes.

4 Q So now the tolerance to approve a pricing
5 exception was lowered to 100 basis points?

6 A Yes.

7 Q So if it was over 100 basis points, then
8 Ms. Allison could no longer approve it, it had to go
9 to somebody else?

10 A It just couldn't be done.

11 Q Couldn't be done at all?

12 A Right. Unless we were absorbing it.

13 Q Okay.

14 So let's say a loan was below the 100 basis
15 points number. Would -- could a loan have a pricing
16 exception that was below the 100 basis points
17 tolerance?

18 A Yes.

19 Q Okay.

20 And that loan could be approved by
21 Ms. Allison, right, if it was below the 100 basis
22 points?

23 A Yes.

24 Q And if it was approved, the region still
25 absorbed that pricing exception?

1 A Or below a 100?

2 Q Ya. Because it's a pricing exception.

3 A Our -- it wasn't absorbed by our
4 compensation. If it was under -- I believe it was
5 87-and-a-half basis points for a conventional loan
6 and a 100 for government loans. And if it was below
7 those tolerances, then NAF corporate would be
8 absorbing the pricing exception as it related to our
9 override.

10 Q Okay.

11 A The pricing exception cost of it, I'm sure
12 still hit the region's P and L.

13 Q Okay.

14 So, if it was below 100, corporate absorbed
15 the cost, not the region?

16 A That's correct.

17 Q Okay.

18 Was there a number after the February '19
19 region where Ms. Allison still had to -- she could no
20 longer approve the pricing exception, it had to go to
21 somebody else for approval?

22 A There was no escalation policy any longer,
23 because they basically said, if it's over this
24 amount, you either absorb it or you don't do it.

25 Q Okay.

1 So, the second lay -- the additional layer
2 of potential approval for a -- more of an outlier
3 loan that was no longer in place?

4 A That's correct.

5 Q Okay.

6 (Whereupon, Defendant's Exhibit Number Five
7 was marked for identification.)

8 BY MR. PERLOWSKI:

9 Q Show you what's been marked as Exhibit Five,
10 Ms. Spearman. And just let me know when you've had a
11 chance to familiarize yourself with it. And the
12 questions that I'm going to ask you are about your
13 email on -- of March 29th of 2019; but again, take
14 your time.

15 A Okay.

16 Q Ms. Spearman, your email of March 29th of
17 2019 to Mr. Arvielo, Kelly Allison, Ms. Arvielo,
18 Ms. Bunce, Mr. Reed, was that your attempt to explain
19 your understanding of the changes with respect to
20 pricing exceptions?

21 MS. GIBSON: Objection. Form.

22 BY MR. PERLOWSKI:

23 Q And again, I'm referring to your email of
24 11:41 a.m. on March 29th, 2019.

25 A I think my email was in an attempt to

1 explain the chronology of what had happened. And the
2 back and forth of how they were going to be handled.

3 Q Okay.

4 And your -- the third bullet point, that I
5 think the entry is March 19th, that reflects what you
6 were talking about earlier where there were
7 thresholds of 187.5 (sic); is that right?

8 A Yes.

9 Q And you say, therefore, we sent an email
10 with a revised proposal of comp back to 140 and PE
11 thresholds of 100 slash 87.5; do you see that?

12 A Uh-huh.

13 Q So that was a proposal that was sent by you
14 and Ms. Allison?

15 A There was back and forth over that period of
16 time, from February 12th to March 29th, in which,
17 again, they were asking for our help --

18 Q Right.

19 A -- for a period of 90 days.

20 Q Right.

21 A And we were still in shock that there was a
22 profitability issue with the company, much less our
23 region, given, you know, we had been told up until
24 November or December of '18, that we were highly
25 profitable, the company was doing well.

1 So, when they asked if we could help for a
2 period of 90 days, yes, we were attempting to come up
3 with something that might work.

4 Q Okay.

5 So the rev -- you say, we sent an email with
6 a revised proposal; do you see that?

7 A Uh-huh.

8 Q The we is who?

9 A Kelly and I.

10 Q Okay.

11 So, explain to me in the proposal that you
12 and Ms. Allison sent, you said there were going to be
13 PE thresholds of 187.5 (sic) --

14 A That was what --

15 Q -- right?

16 A Ya. Because I think that was what was
17 originally given to us in the -- at the February
18 meeting.

19 Q Okay.

20 So as part of your proposal, if a -- if a
21 loan exceeded those thresholds, what was going to
22 happen?

23 MS. GIBSON: Objection. Asked and answered.

24 BY MR. PERLOWSKI:

25 Q Please answer.

1 A You're going to have to give me the question
2 again.

3 Q Under the proposal that you had sent, if a
4 loan exceeded the threshold of say 100, what was
5 going to happen?

6 MS. GIBSON: Objection. Mischaracterizes
7 the document also.

8 BY MR. PERLOWSKI:

9 Q Please -- please answer the question.

10 A For -- ya. In the pro -- in the proposal,
11 for a period of 90 days, we would be forced to absorb
12 over that tolerance.

13 Q You would agree with me, Ms. Spearman, that
14 90 days doesn't appear anywhere in your email of
15 March 29th of 2019 at 11:41 a.m.?

16 A No.

17 Q Okay.

18 And the thresholds that were ult -- the
19 revised thresholds you said went from 300 -- up to
20 300 basis points, the revised thresholds were the 100
21 slash 87.5?

22 A You mean is that what they ended up doing?

23 Q Yes.

24 A Yes.

25 Q Ms. Spearman, the issue of source codes has

1 come up in this litigation. And I just want to, once
2 again, start with the basics.

3 What is a source code?

4 A It is a categorizing of where the borrower,
5 also known as a lead, where that was derived.

6 Q Did -- when you joined N-A-F, do you
7 remember what source codes, what lead codes were in
8 place?

9 MS. GIBSON: Objection. Foundation.

10 MR. PERLOWSKI: Let me strike that.

11 BY MR. PERLOWSKI:

12 Q So, it sounds like, from your answer to the
13 prior question, that what a source code is, it's just
14 trying to categorize, basically, what the source of
15 the business was?

16 A Correct.

17 Q In simplest terms?

18 A Yes.

19 Q Who made the determination of -- who made
20 the categorization determination?

21 So, NAF sells a loan to Henry Perlowski.
22 Who is making the determination as to what source
23 code is used with respect to that loan?

24 A The loan officer selects that, unless it is
25 a corporate-referred lead from a specific entity,

1 like an online entity, when that loan is referred to
2 the loan officer in the loan origination system, that
3 referral source would already be listed there. For
4 example, Zillow.

5 Q Okay.

6 So, if it was a corporate-referred lead,
7 effectively, the source code would already be
8 prepopulated?

9 A Yes.

10 Q Okay.

11 So it -- so what is a -- heard the term real
12 estate lead, what does that mean or what did that
13 mean?

14 A Meaning it was referred to the loan officer
15 by a real estate agent, usually.

16 Q Is a corp gen source, is that the same thing
17 as the corporate-referred lead that you were just
18 talking about?

19 A No.

20 Q What is that? What's a corp gen lead?

21 A It's just a lead source that they have
22 available in the system to select.

23 Q And what -- what did it -- what did corp gen
24 reflect in terms of the origin of the business?

25 Like, I mean, real estate lead, you said by an agent,

1 that makes intuitive sense to me --

2 A Yes.

3 Q -- right?

4 So corp gen, what does that mean with
5 respect to the source of the business?

6 A I don't know. They created it.

7 Q You said they created it?

8 A New American Funding created the source
9 code.

10 Q Do you know who?

11 A I do not.

12 Q Do you know when?

13 A I do not.

14 Q Have you ever heard the term connect in
15 terms of a source code?

16 A Yes.

17 Q What does connect refer -- refer to in terms
18 of the source of the business?

19 A If memory serves, it was a special
20 program -- a special type of corporate-generated lead
21 that was a partnership with Zillow, in which leads
22 that came in through Zillow were referred to a local
23 loan officer, and they called it the connect program.

24 Q Okay.

25 Do you know -- do you know when the connect

1 source code came into effect?

2 A I do not remember specifically when.

3 Q Did the use of a particular source code
4 impact a loan officer's compensation in any way?

5 A Yes.

6 Q How?

7 A For a corporate-generated lead or connect
8 lead, the loan officer was paid a lower commission
9 than from a realtor lead or LO generated.

10 Q What is LO generated?

11 A It could be from other sources other than
12 realtor, but it was generated by the loan officer.

13 Q So, loan officer him or herself actually
14 originated --

15 A Former client.

16 Q Sure.

17 A Builder, realtor.

18 Q Okay.

19 And how did -- with respect to the -- a loan
20 on a realtor lead or a loan officer-generated lead,
21 would that be the same commission to the loan
22 officer?

23 A Say that again.

24 Q For a realtor lead and a loan
25 officer-generated lead, would that be the same

1 commission for the loan officer?

2 A Yes.

3 Q For connect and corp gen, would it be the
4 same commission?

5 A They were two different compensations.

6 Q Okay.

7 Both were lower --

8 A Yes.

9 Q -- then -- then the real estate and loan
10 officer, but they were different?

11 A Yes.

12 Q Okay.

13 And how did the -- how did the origin of a
14 loan impact your compensation, if at all?

15 A Managers were paid a lower override on the
16 connect and corporate-generated leads.

17 Q How so?

18 A I would have to reference documentation, but
19 from memory, I would say it was like ten basis point
20 override for a corporate generated lead versus much
21 more than that on a noncorporate generated.

22 Q And you said the manager was paid a lower
23 override, what manager are you -- what position are
24 you referring to?

25 A Branch manager, area manager, regional

1 manager.

2 Q And was that -- was that the case throughout
3 your employment at N-A-F -- at NAF? Excuse me.

4 A (No response.)

5 Q That there was a differential in the
6 override bonuses between the lease --

7 A It was a case whenever they introduced them,
8 which I don't believe connect, in the best of my
9 recollection, was in existence when we first started;
10 but I couldn't be sure.

11 Q Was corp gen in effect when you started?

12 A It wasn't something that was used, because
13 we didn't really receive corporate-generated leads;
14 but I do not know if it was a part of possibly loan
15 officers agreements that it was listed there as a
16 different comp. It just wasn't used.

17 Q Did you ever raise a concern to anyone about
18 loan officers using one source code versus another?

19 A Yes.

20 Q Tell me about that.

21 A Kelly and I together raised the concern to
22 Jon Reed and Jan Preslo that we felt there could be a
23 concern with Dodd-Frank LO compensation rules.

24 Q Did you ever raise that concern to anyone
25 within NAF's legal department?

1 A No. Because they -- Jon and Jan and Christy
2 told us that they had sought legal counsel for that
3 decision.

4 Q Okay.

5 Did they tell you what legal counsel opined
6 on?

7 A No.

8 Q I mean, they didn't tell you what legal
9 actually said with respect to that issue?

10 A My memory is that they said it may be in the
11 gray area, but we feel it's pretty low risk, is my
12 memory.

13 Q When was this conversation with Ms. Preslo
14 and Mr. Reed?

15 A Some time after the leadership meeting in
16 February of '19.

17 Q What caused you to bring the concern to
18 Mr. Reed and Ms. Preslo about whether there was an
19 issue with the Dodd-Frank loan officer compensation
20 rules after the leadership meeting, what prompted you
21 to raise that issue?

22 A It was recommended by Christy, Jon, and Jan
23 that those source codes existed, the corporate gen
24 and connect. And that those could be used by loan
25 officers to help with pricing exceptions.

1 Q What did they say in terms of how the source
2 codes could be used to help with the pricing
3 exceptions?

4 A If you source something, connect or
5 corporate generated, and the loan officer is making a
6 lower compensation, that creates a differential of
7 revenue that's not being paid to the loan officer
8 that could go to help absorb the pricing exception.

9 Q To offset the pricing exception?

10 A Yes.

11 MR. PERLOWSKI: Quick break?

12 MS. GIBSON: Ya. Great.

13 THE VIDEOGRAPHER: The time is 2:04 p.m., we
14 are off video record.

15 (Whereupon, a short break was taken.)

16 THE VIDEOGRAPHER: The time is 2:17 p.m., we
17 are back on video record.

18 (Whereupon, Defendant's Exhibit Number Six
19 was marked for identification.)

20 BY MR. PERLOWSKI:

21 Q Ms. Spearman, I'm going to show you what's
22 been marked as Exhibit 6, which is an email chain.
23 And I have a couple of questions for you.

24 Yours -- there's an email from you that
25 appears on the third -- starts on the bottom of the

1 third page and that's where I'm going to start; but
2 of course, as always, take your time to familiarize
3 yourself with the document.

4 A Okay.

5 I've read the first couple of pages, so we
6 can see if I can answer based on that.

7 Q Okay.

8 So, I'm looking at your email of
9 November 5th, 2019 at 2:44 p.m. --

10 A Uh-huh.

11 Q -- at the bottom of the third page. Just
12 help me out here. So, who is Shannon Johnston?

13 A She works in secondary marketing, which
14 would be, like, pricing for NAF.

15 Q In the corporate office or in the Southeast?

16 A Corporate.

17 Q Who's Kristin Ankeny?

18 A She also works in secondary. VP, I think,
19 in secondary pricing and corporate.

20 Q Okay.

21 And in your email you were saying, we pay
22 for PEs dollar for dollar over our threshold; what
23 did you mean by that?

24 A So I think what was happening here is loan
25 officers were being deducted for some of the PEs --

1 I'm sorry. Branch managers were being deducted.
2 Their compensation was being deducted for some of our
3 PEs. And -- because the thresholds and the -- you
4 know, PE policy was being changed, we didn't want
5 that to impact our downline branch managers or loan
6 officers.

7 Q Okay.

8 So, at some point, whether intentionally or
9 by virtue of an error, branch managers were also
10 being impacted by the pricing exception absorptions?

11 A Yes.

12 Q Do you know how you learned of that fact?

13 A Let me read on back to the original.

14 Q Ya.

15 Whether that's within the context of the
16 email or otherwise; I just --

17 A Okay.

18 Q -- my question was, just generally, how did
19 you learn of that fact?

20 A It would've -- we are copied on our
21 branch -- our branch managers also get a monthly
22 recap.

23 Q Uh-huh.

24 A So, we must have discovered it on one of the
25 branch managers' recaps.

1 Q And once you discovered it, was your
2 intention to try to correct it?

3 A We, basically, didn't want our branch
4 managers to have to deal with the change that we were
5 experiencing.

6 Q Okay.

7 So, in Ms. -- and I recognize, you're not
8 copied on this email; but in the very first -- the
9 email on the first page, the last one, Ms. Preslo
10 states, Kelly and Gina have been very clear they want
11 to absorb all the hits unless it is a complete LO
12 screwup; is that -- is that fair, in terms of what
13 your -- what you and Ms. Allison were stating at the
14 time?

15 A If they were going to take the PEs from
16 somebody, we wanted it to be us, not our branch
17 managers or loan officers. We were trying to protect
18 them from this change.

19 Q Do you know whether branch managers and
20 other regions were also being potentially impacted by
21 the change in terms of the pricing exception policy?

22 A I don't -- I don't know.

23 Q During your employment with NAF, did you
24 periodically receive a proposed amendment to
25 schedules of your Regional Manager Agreement, some

1 new schedules?

2 A I believe there were a few occasions in
3 which they would ask me to sign a new schedule so
4 that we could hire someone.

5 Q Okay.

6 How would you typically receive those new
7 schedules?

8 A Email.

9 Q From whom, typically?

10 A Someone in HR.

11 Q And you said you would be asked to sign
12 those amended schedules?

13 A Do you have an example of one?

14 Q I do. And I'll get to that in a second.

15 A Okay.

16 I mean, I need to see what -- you know,
17 which one you're referencing.

18 Q Just in terms of a process, would you
19 typically return any signed schedules by DocuSign or
20 would you actually, you know, put your physical
21 signature on a schedule?

22 MS. GIBSON: Objection. Foundation.

23 THE WITNESS: To the best of my
24 recollection, if I signed one, it would have most
25 likely been electronic.

1 BY MR. PERLOWSKI:

2 Q Did N-A-F -- did NAF typically use
3 electronic signatures as a company practice?

4 A Yes.

5 (Whereupon, Defendant's Exhibit Number Seven
6 was marked for identification.)

7 BY MR. PERLOWSKI:

8 Q Ms. Allison -- sorry, Ms. Spearman. I
9 apologize about that. I knew I was going to do that
10 at some point today.

11 A Uh-huh.

12 Q My apologies.

13 Ms. Spearman, I'm showing you what's been
14 marked as Exhibit Seven. And I guess my question to
15 you: Understanding this is unsigned, do you recall
16 ever receiving this schedule one that was -- has a
17 date of March 1st, 2017 on the front page and then
18 appears to have been signed in April of '17 by
19 Ms. Preslo?

20 A I do not recall ever seeing this.

21 Q When you say, you don't recall ever seeing
22 it, meaning you may have, but you just don't
23 remember?

24 A To my knowledge, the only regional manager
25 agreements I have are the one I signed in November

1 of 2016 and then the one in March of 2020. So, I
2 don't believe --

3 Q Okay. We'll get to that.

4 (Whereupon, Defendant's Exhibit
5 Numbers Eight and Nine were marked for
6 identification.)

7 BY MR. PERLOWSKI:

8 Q I'm showing you what's been marked as
9 Exhibit Eight, Ms. Spearman, which is an amendment to
10 schedule one regional manager compensation that has
11 a -- at least a date on the first page of January 1st
12 of 2018 and ask if you recall receiving this
13 amendment to schedule one?

14 A Is your -- is -- unsigned?

15 Q Yes.

16 A I don't recall seeing this.

17 Q Understanding you don't recall seeing it,
18 could you flip over to the second page, please. In
19 the second page it talks about CM1 loss calculation;
20 do you see that?

21 A Yes.

22 Q At some point in time, was a CM1 loss
23 calculation introduced into your compensation
24 formula?

25 A I do remember Jon Reed reviewing with us at

1 one of our meetings that they wanted to start
2 recapturing lost revenue on new branches. And that
3 if you had a branch that was opened for a period of
4 time and it was not profitable, per their
5 calculations, that they would want to call back some
6 of the override. I remember them introducing that
7 concept verbally.

8 Q Okay.

9 Do you remember it ever being introduced in
10 practice as opposed to just being discussed verbally?

11 A Because we didn't have branches that weren't
12 profitable by the time period, I do not remember it
13 ever going into practice. I vaguely remember one
14 branch in North Carolina, I can't say for certain,
15 but if it was, it was definitely not on any large
16 scale, because I would recall it.

17 Q Do you remember -- with respect to the
18 branch in North Carolina, do you remember any effort
19 to recapture any override bonus compensation due to
20 the fact that that branch wasn't profitable?

21 A I remember some conversation about it. I
22 cannot recall if they recaptured anything.

23 Q Ms. Spearman, I'm showing you what's been
24 marked as Exhibit Nine, which is an email chain. The
25 latest in time is on January 18th of 2018 from you to

1 Ms. Preslo copying a number of others. Just take a
2 moment to look through it. Just let me know when
3 you're ready.

4 A Okay.

5 Q See on the third page of the document, the
6 number on the bottom right-hand corner is NAF135?

7 A Yes.

8 Q Amber Braun in HR is saying, good evening,
9 Gina, attached, please find the Regional Manager
10 Agreement that Jan and Jon had discussed with you.
11 And that's dated -- the most -- January 9th of 2018;
12 do you see that?

13 A Yes.

14 Q And then Ms. Braun, in the next email, is
15 asking if she would like for you to send this to you
16 for signature in Adobe Sign; do you see that?

17 A Uh-huh.

18 Q And then you say in response, a few days
19 later, I'd like to discuss this change to my comp
20 plan in further detail with Jon and Jan when we visit
21 California for the regional meetings; do you see
22 that?

23 A Uh-huh.

24 Q Is that -- does this email trail at all
25 refresh your recollection as to whether you may have

1 received this amendment to schedule one that was
2 shown as Exhibit Eight?

3 A Does this indicate what attachment they're
4 referring to?

5 Q Ms. Braun, in her email, says, attached
6 please find the Regional Manager Agreement that Jan
7 and Jon have discussed with you, as this has been
8 effective as of January 1st of 2018; do you see that?

9 A Uh-huh. Right. But --

10 Q And this Exhibit Eight is an amendment to
11 schedule one entered into as of the first day of
12 January 2018; so, at least the dates match up.

13 MS. GIBSON: You can finish your -- if you
14 had a response. You were interrupted.

15 MR. PERLOWSKI: She asked me if it -- if --
16 she asked a question. She wasn't answering the
17 question. She asked a question.

18 MS. GIBSON: And I think she was going on,
19 but go ahead.

20 If there's a question out there, you can
21 continue, Henry.

22 BY MR. PERLOWSKI:

23 Q So, does these (sic) email chain refresh
24 your recollection as to your receipt to -- of the
25 amendment to schedule one that's been marked as

1 Exhibit Eight, which was to be entered into as of
2 January 1st of 2018?

3 A No.

4 Q No?

5 So, Ms. Braun's email says that Jan and Jon
6 have discussed a Regional Manager Agreement --

7 A Uh-huh.

8 Q -- with you; do you recall anything about
9 those discussions, sitting here today?

10 A I do not.

11 (Whereupon, Defendant's Exhibit Numbers 10
12 and 11 were marked for identification.)

13 BY MR. PERLOWSKI:

14 Q I'm going to show you what's been marked as
15 Exhibit 10, Ms. Spearman, and ask if you recall ever
16 receiving this schedule one, the date, at least on
17 the first page, of March 1st of 2018?

18 A I don't necessarily recall receiving this
19 agreement, but I do notice that it references
20 Orlando.

21 Q Yep. It does talk -- see, if you look at
22 the third page of the agreement -- of the schedule,
23 sorry --

24 A Uh-huh.

25 Q -- see there's an override bonus calculation

1 table?

2 A Uh-huh.

3 Q And then, there is a specific row to
4 loans -- loan volume and units originated, and it
5 says Kissimmee, Orlando, Orlando Waterford Lakes, and
6 Tampa; do you see that?

7 A Uh-huh. I do.

8 Q Okay.

9 And it -- so it looks like, with respect to
10 those loans, the override bonus calculation was
11 different than it was with respect to other loans
12 originated by the branch --

13 A Yes.

14 Q -- right?

15 Do you recall the circumstances in which
16 that came to be?

17 A Yes. We were -- NAF was adding those
18 branches to our territory.

19 Q So that was part of the expansion that we
20 were discussing earlier today?

21 MS. GIBSON: Objection. Foundation.

22 THE WITNESS: Yes. I mean, it was part
23 of -- yes.

24 BY MR. PERLOWSKI:

25 Q Okay. Sorry.

1 You said, NAF was adding those branches.
2 Are these branches that you and Ms. Allison
3 facilitated the opening of or were these just
4 branches that were added to your region?

5 A These were branches that were added to our
6 region.

7 Q Okay.

8 Which you were not involved in the
9 facilitation of the opening, correct?

10 A We were not. The manager there requested to
11 be a part of our region.

12 Q Do you recall the discussions in terms of
13 what kind of override bonus you would receive with
14 respect to those locations, because they were being
15 added to your region at the manager's request?

16 A Just that they would be at a lower
17 compensation than branches that we generated and
18 opened on our own.

19 Q Before -- prior to March of '18, had you
20 been receiving any override bonuses with respect to
21 loans originated from Kissimmee?

22 A I can't say for sure, but I don't believe
23 so.

24 Q Okay.

25 What about loans originated from either

1 Orlando or Orlando Waterford Lakes?

2 A I don't remember the exact dates when they
3 were added or when we started receiving compensation.

4 Q Same for Tampa?

5 A Correct.

6 Q Did you -- did you have a concern that you
7 were going to be receiving override bonuses at a
8 lower compensation formula for these four branches?

9 A No.

10 Q And I'm referring to the four branches in
11 the --

12 A Right.

13 Q -- in the third row, in the override bonus
14 calculation table.

15 A Uh-huh.

16 And your question is?

17 Q Did you have a concern that you were
18 receiving a lower override bonus with respect to
19 those four branches?

20 A I did not have a concern.

21 Q Ms. Spearman, I'm going to show you what's
22 been marked as Exhibit 11, which is an email
23 exchange. And on April 5th of 2018, Ms. Spearman,
24 you say to Ms. Bunce, hey -- hi Christy, we got our
25 new agreements and I believe they are still

1 incorrect; do you see that?

2 A Yes.

3 Q Does this at all in your -- you then say
4 that NAF is only supposed to pay Kelly and I
5 ten basis points on Miguel's branches.

6 Is Miguel the manager that you were
7 referring to in the prior -- in our prior discussion
8 a minute ago?

9 A Yes.

10 Q And the branches that are referred to are
11 Kissimmee, Orlando, Orlando Waterford Lakes, and
12 Tampa; do you see that?

13 A Yes.

14 Q So it looks like the draft agreement that
15 you received had 15 basis points instead of ten?

16 A Right.

17 So I was -- I remember this (indicating) --
18 this block. I don't remember signing a new Regional
19 Manager Agreement.

20 Q Okay.

21 Do you remember receiving a new Regional
22 Manager Agreement, irrespective of whether you signed
23 it or not?

24 A I do not.

25 I remember this calculation table. And I

1 remember that it was -- they were giving us too much;
2 so yes, I corrected her.

3 Q Right.

4 And when you say, this calculation table,
5 again, Ms. Spearman, I'm only trying to make sure
6 that the record's clear for down the road.

7 A Uh-huh.

8 Q I think you were pointing to the calculation
9 table that's on the top of Page 2 of the exhibit, the
10 Bates number is NAF130; am I correct? No. Sorry.
11 Your --

12 MS. GIBSON: The email.

13 BY MR. PERLOWSKI:

14 Q Stick with -- stick with Exhibit 11.

15 MS. GIBSON: Exhibit 11.

16 THE WITNESS: Oh, okay.

17 BY MR. PERLOWSKI:

18 Q When you say, this compensation table, were
19 you referring to the compensation table that's on the
20 top of Page 2 of the exhibit, and the number on the
21 bottom right-hand corner is NAF130?

22 A Yes. That's what I'm pointing to. Correct.

23 Q Okay. Okay.

24 MR. PERLOWSKI: Can we go off the record for
25 a moment?

1 THE WITNESS: Yes.

2 MS. GIBSON: Sure.

3 THE VIDEOGRAPHER: The time is approximately
4 2:44 p.m., we are off the video record.

5 (Whereupon, a short break was taken.)

6 THE VIDEOGRAPHER: The time is 2:49 p.m., we
7 are back on video record.

8 (Whereupon, Defendant's Exhibit Number 12
9 was marked for identification.)

10 BY MR. PERLOWSKI:

11 Q So, Ms. Spearman, what I'm showing you with
12 Exhibit 12 -- and again, feel free to take a look at
13 the entire document -- is a series of schedule fours,
14 that are hopefully in chronological order, that have
15 your signature on them. So why don't you just -- and
16 this is a composite of multiple schedule fours in
17 chronological order that have your signature on them.
18 So, just let me know when you're ready.

19 A Okay.

20 Q Okay.

21 So generally speaking -- and just feel free,
22 again, refer to the exhibit or not -- do you remember
23 receiving schedule four updates from N-A-F addressing
24 overrides during the loan officer guarantee period
25 periodically during your employment with NAF?

1 A Yes.

2 Q How would you typically receive the schedule
3 fours?

4 A Electronically.

5 Q From human resources?

6 A Human resources, yes, would send them
7 occasionally. And the recruiter, Paul Pritchard,
8 would frantically call me that I needed to sign
9 whatever had been sent to me, because this person
10 would not be able -- their offer wouldn't be able to
11 go out or they wouldn't be able to be hired, so I
12 would need to sign it.

13 Q Okay.

14 And when Mr. Pritchard was calling
15 frantically, trying to get you to sign something so
16 that an offer would come out --

17 A Yes.

18 Q -- was he specifically referring to the
19 schedule that refers to no overrides during the loan
20 officer guarantee period or was he referring to a
21 different kind of schedule?

22 A He wouldn't specify. I don't think he knew.
23 He just knew that HR needed something signed in order
24 for things to move forward. One -- this clause in
25 1.4B of my 2016 agreement stated not applicable; but

1 I was told I did need to sign these in order for them
2 to receive their offers or start -- the loan officer
3 that was being referenced.

4 Q So you -- I think -- and the exhibit will
5 obviously speak for itself -- you e-signed a series
6 of these schedule fours at periods of time during
7 your employment with NAF, correct?

8 A Yes.

9 Q Did you ever ask anyone at NAF any questions
10 about what the schedule fours, that you were signing,
11 meant?

12 A No.

13 Q Did you understand in entering into schedule
14 four that there would be deductions taken with
15 respect to -- I'm sorry -- not deductions, but during
16 a loan officer's guarantee period that you would not
17 be paid override bonuses with respect to that loan
18 officer?

19 A I thought that I would be paid during the
20 guarantee period.

21 Q So let's -- let me ask you, start with a
22 different question.

23 Were you ever paid override bonuses during a
24 loan officer's guarantee period?

25 A I believe that there were occasions in which

1 I was, yes.

2 Q So, a guarantee period, just -- again, just
3 going back to just, again, a lay person's
4 understanding, I mean, is it that a loan officer was
5 guaranteed a certain amount of compensation during a
6 certain number of months?

7 A Yes.

8 Q So irrespective of production?

9 A Yes.

10 Q The guarantee set a floor, but not a
11 ceiling?

12 A That's correct.

13 Q Okay.

14 Would the loan -- so, if a loan officer did
15 not achieve production in the amount of the
16 guarantee, the loan officer would not receive any
17 production-based compensation on those loans, right?

18 A They were guaranteed X number of dollars per
19 month regardless of how much they closed. If they
20 closed enough production that their commission would
21 have exceeded that guarantee, they would get the
22 higher amount.

23 Q Right.

24 But if so -- so, here, let's just look --
25 and understand, there have been names at cc, it says

1 redacted in the --

2 A Uh-huh.

3 Q -- in the -- the names have been redacted.

4 A Uh-huh.

5 Q So with -- for whoever the person that was
6 reflected, you see the very first amount of guarantee
7 is 150,000 month one. So if that person achieved
8 \$140,000 of commission-based compensation, they would
9 just be paid the 150, right?

10 A If they closed enough production that the
11 commission would have equaled 140, they would have
12 received 150.

13 Q Right.

14 When you e-signed -- so the first schedule
15 four has an effective date of July 30th of 2018 and
16 it appears to have been e-signed on July 12th of
17 2018; do you see that?

18 A Yes.

19 Q Did you understand that you were not going
20 to receive an override during the loan officer
21 guarantee period for the loan officers who are
22 identified on the schedule?

23 A I did not.

24 Q Did you ask anybody about what this schedule
25 four meant?

1 A No. Because I thought 1.4B schedule one
2 stated not applicable.

3 Q So, at any point in time, with respect to
4 the various schedule fours that you e-signed, did you
5 ever ask anyone at NAF what that schedule meant?

6 A I asked Paul Pritchard, the recruiter,
7 because he would say I need -- I had to sign it in
8 order for the person's offer to go out.

9 Q Okay.

10 A So I thought that was the purpose.

11 Q At some point during your tenure, did you
12 stop receiving overrides during the loan officer
13 guarantee period for certain loan officers?

14 A Yes.

15 Q Did you, then, talk to anyone about that?

16 A Yes.

17 Q Whom -- who? Sorry.

18 A Christy, Jan, Jon.

19 Q Tell me what you can recall about your
20 discussions with Christy about that topic, that
21 override bonuses weren't being paid during the loan
22 officer guarantee period.

23 A She would say she's going to look into it.
24 She'll talk to HR. She'll take a look at the
25 agreement. Those sorts of things.

1 Q Okay.

2 How about Ms. Preslo, what do you recall her
3 saying about the issue of the fact that you were not
4 receiving override bonuses during certain loan
5 officer guarantee periods?

6 A Similar comments; either ignore or delay or
7 we'll look into it.

8 Q What about with respect to Mr. Reed, what
9 did he say about the topic of you not receiving
10 override bonuses during certain loan officers
11 guarantee periods?

12 A He would generally defer to Jan and Christy
13 on those types of matters.

14 Q So nothing specific that you can recall him
15 saying?

16 A No.

17 Q Did you talk to anyone other than Ms. Bunce,
18 Ms. Preslo, and Mr. Reed about the topic of you not
19 receiving override bonuses during certain loan
20 officer guarantee periods?

21 A I remember talking to Christy about it on
22 several occasions, but one in particular is when Eric
23 Fellows and Michele Hoefle joined us as regional
24 sales managers. And they questioned the deduction on
25 their compensation. So, we brought it to Christy

1 Bunce's attention, that they were being deducted and
2 their agreement said not applicable. And we made the
3 comment that our agreement was the same, that it
4 stated not applicable as well and that we were being
5 deducted.

6 And my recollection is that Christy said
7 that we would need to pay Eric because his agreement
8 said not applicable.

9 Q Had you actually seen Mr. Fellows'
10 agreement?

11 A I believe he sent it to us when he was
12 questioning the deduction. And it was corrected and
13 he was paid, according to him.

14 Q Do you have any -- what's the source of your
15 knowledge that he was paid?

16 A Just that he told me they corrected it.

17 Q Okay.

18 (Whereupon, Defendant's Exhibit Number 13
19 was marked for identification.)

20 BY MR. PERLOWSKI:

21 Q Ms. Spearman, I'm going to show you what's
22 been marked as Exhibit 13. And I understand it's
23 the -- in the same vein as Exhibit 12. Exhibit 13
24 reflects a series of schedule six recruiting
25 allocation forms that are e-signed by you. And I

1 made every effort to put these in chronological
2 order. So, for example, you'll see the first one,
3 the first one within the exhibit is a grand total of
4 six pages and you'll see your e-sign on the sixth
5 page, which is NAF470.

6 A Uh-huh.

7 Q So, do you -- is it -- recognizing -- feel
8 free to take your time to look through the exhibit,
9 but do you recall receiving these recruiting
10 allocation forms schedule sixes periodic during your
11 employment with NAF?

12 A Yes.

13 Q You mentioned earlier, when we were talking
14 about Exhibit 12, which were the schedule fours, that
15 Mr. Pritchett (sic) was frantically asking you to
16 sign certain schedules so that he could, in effect,
17 make offers to people?

18 A Yes.

19 Q On -- schedule sixes are recruiting
20 allocation forms.

21 Do you recall whether Mr. Pritchard was
22 frantically asking you to sign the schedule sixes,
23 the schedule fours, or both?

24 MS. GIBSON: Objection. Form.

25 THE WITNESS: Again, I'm not sure that he

1 knew what I needed to sign. He would simply say,
2 HR is telling me that there is something pending
3 your signature in order for us to move forward.

4 BY MR. PERLOWSKI:

5 Q Okay.

6 So let's look at the schedule sixes. I
7 think you're in a different document --

8 A I am. I'm just checking my agreement.

9 Q Okay.

10 Well -- I want to ask you some questions
11 about schedule six.

12 A Okay.

13 MS. GIBSON: If she needs to look at another
14 document to help her with this --

15 MR. PERLOWSKI: I haven't even asked a
16 question yet. I'm just trying to focus --

17 MS. GIBSON: Well, she can refresh her
18 memory.

19 Go ahead and look at whatever you need
20 to look at.

21 MR. PERLOWSKI: Okay.

22 Just be here a lot longer, but that's
23 fine.

24 MS. GIBSON: Well --

25 THE WITNESS: I wanted to see what it

1 corresponded to. Okay.

2 BY MR. PERLOWSKI:

3 Q So, looking at the schedule -- do you have
4 the schedule six form in front of you?

5 A Yes.

6 Q Okay.

7 So, the first -- the first -- the first of
8 the schedule sixes within Exhibit 13 you e-signed on
9 May 30th of 2018.

10 A Uh-huh.

11 Q What was your understanding of what this
12 recruiting allocation form represented?

13 A That we would pay the recruiter five basis
14 points.

15 Q The recruiter?

16 A Yes.

17 Q Okay.

18 So, explain what that -- practically, what
19 would happen. So, employee -- or a person's
20 recruited and then the recruiter is paid five basis
21 points as a result of the successful recruiting of a
22 candidate?

23 A Yes.

24 Q Okay.

25 And when you say, we would pay the recruiter

1 five basis points, who's the we that you're referring
2 to?

3 A They would -- Kelly and I. They would
4 deduct it from our compensation.

5 Q Okay.

6 Was it always five basis points?

7 A I believe so.

8 Q And to your knowledge, every time that a
9 recruiter successfully recruited somebody and
10 five basis points were going to be taken from yours
11 and Ms. Allison's bucket and put into the recruiter's
12 bucket, were you asked to sign a recruiting
13 allocation form?

14 A I'm not sure if it happened every single
15 time, but it definitely happened.

16 Q So when you were signing this form, you were
17 on -- you understood that, in effect, a small piece
18 of compensation would be taken out of your bucket and
19 placed into the recruiter's bucket?

20 MS. GIBSON: Objection. Form.

21 THE WITNESS: Can you state the question
22 again?

23 BY MR. PERLOWSKI:

24 Q Sure.

25 You understood that certain amounts were

1 being taken from yours and Ms. Allison's override to
2 fund the five basis points that was being allocated
3 to the recruiter when you signed this form?

4 A I don't know if I believe that by signing
5 this form that's what I was agreeing to; but --

6 MS. GIBSON: You can finish.

7 THE WITNESS: -- but it was my general
8 understanding that we were to pay for the
9 recruiter.

10 BY MR. PERLOWSKI:

11 Q And you wanted the recruiter to find more
12 loan officers because that increased your potential
13 compensation --

14 A Yes.

15 Q -- down the road?

16 MS. GIBSON: Objection. Foundation.

17 BY MR. PERLOWSKI:

18 Q You said yes?

19 A Yes.

20 Q More loan officers typically meant more
21 money?

22 A Yes.

23 (Whereupon, Defendant's Exhibit Number 14
24 was marked for identification.)

25 BY MR. PERLOWSKI:

1 Q Ms. Spearman, with Exhibit 14, I'm showing
2 you is a composite of signed schedule sevens
3 overrides to authorized personnel that you signed
4 during your employment with N-A-F. So, again, feel
5 free to take the opportunity to look at Exhibit Seven
6 (sic). Just let me know when you're ready.

7 A Okay.

8 Q With respect to schedule -- I know I asked
9 you with respect to schedule four how you typically
10 receive them.

11 With respect to schedule six, schedule
12 seven, did you receive those in the same manner via
13 email from human resources?

14 A Yes.

15 Q And you would typically be asked to e-sign
16 them?

17 A Yes.

18 Q Okay.

19 And you would typically return them to human
20 resources?

21 A Typically, the signature would automatically
22 send the document back to them, so I didn't have to
23 send it.

24 Q Oh, right. That's the beauty of e-sign.

25 When you -- when you -- so the first

1 schedule seven is a three-page document, appears with
2 your signature's on May 15th of 2018. What was your
3 understanding of what this schedule seven reflected?

4 A That an override or bonus was being paid to
5 one of our downline managers.

6 Q You're saying downline manager, are you
7 referring to a particular position within the
8 company?

9 A No.

10 Q So just branch -- branch managers would be a
11 downline manager?

12 A Yes.

13 Q Any other -- what were the other positions
14 that you would consider to be downline managers in
15 addition to branch managers?

16 A Production manager, builder manager,
17 business development manager.

18 Q Okay.

19 Just take a look at the first page of
20 Exhibit 14, please. So, do you see in the column,
21 payment details, there appears to be a series of
22 requests that are captured?

23 A Uh-huh.

24 Q Yes?

25 A Yes.

1 Q Sorry. I had trouble hearing.

2 A Yes.

3 Q Too many concerts at a young age.

4 And at least just from reading this, again,
5 as a lay person, they appear to be different kinds of
6 requests; for example, in the first -- in the first
7 row, it says, Kelly and Gina have requested to
8 allocate 15 basis points branch manager override to
9 any branch managers in the region.

10 And then, you know, the third row, for
11 example, says, Kelly and Gina have requested to
12 allocate \$5 per funded loan in the Southeast region.

13 So I guess my question is: Would these --
14 would this -- would -- in terms of process, would you
15 and Ms. Allison initiate the request in effect to
16 allocate either basis points or dollars to other
17 employees?

18 A Initiate. It was usually what was required
19 to hire that person.

20 Q So, would the -- would the arrangements,
21 whatever the deal was with respect to that specific
22 person, was that typically something that was entered
23 into at the time of hire?

24 A Yes.

25 Q Would it ever typically change, like, for

1 example, you know, two years in, somebody gets a
2 different deal than they had before?

3 A It's possible.

4 Q Okay.

5 So there's a new hire. How would the
6 discussion -- how would it work in terms of deciding
7 what was going to be given to that new hire?

8 Like here, again, for example, the first row
9 says, Kelly and Gina have requested to allocate
10 15 basis points branch manager override to any branch
11 managers in the region.

12 A Uh-huh.

13 Q How does -- how does that get decided?

14 A It's usually market driven, whatever the
15 company -- you know, market rate for that position.

16 Q With respect to these requests -- so is this
17 something that you and Ms. Allison would discuss
18 together that you're willing to grant, you know, this
19 amount to this position?

20 A Yes.

21 Q And then, would you typically, then, inform
22 corporate or would corporate also be involved in the
23 discussions at the outset about what to grant?

24 A We would usually work with the recruiter to
25 write up the offer details. And so, I guess it would

1 be a collaboration. Because we would inevitably talk
2 to corporate or they would approve or deny.

3 Q And the recruiter, I think you testified
4 earlier, was in corporate?

5 A Yes.

6 Q Okay.

7 Would you be talking to anyone else at
8 corporate besides the recruiter about what deal to
9 cut for the new hire?

10 A Yes. We often talked to Jan and Christy
11 about offers.

12 Q Okay.

13 So, typically speaking, understanding there
14 could be exceptions, the deals that were cut to
15 authorize personnel were cut at the time of hire or
16 at the time of the offer?

17 A Yes.

18 Q Okay.

19 And I'm just asking, because it says, you
20 know, authorized personnel is used throughout this
21 document.

22 A Uh-huh.

23 Q Authorized personnel, to your understanding,
24 did that just mean persons who were authorized to
25 receive compensation pursuant to these deals?

1 A I guess so. I've never really thought about
2 that definition.

3 Q Ya.

4 I was going to say, did you ever see
5 anything where you could only authorize to give
6 comp -- you know, to give either basis points or
7 dollars to only a certain bucket of people?

8 A No.

9 (Whereupon, Defendant's Exhibit Number 15
10 was marked for identification.)

11 BY MR. PERLOWSKI:

12 Q I'm going to show you what's been marked as
13 Exhibit 15, Ms. Spearman, which is a schedule eight,
14 it appears that you e-signed on April 8th of 2019; do
15 you recall doing that?

16 A I don't recall doing it, but --

17 Q Okay.

18 Would Exhibit -- Exhibit Eight (sic) also
19 would have been presented to you by human resources
20 by email?

21 A Yes.

22 Q And you would e-sign it and return it back
23 to human resources?

24 A Yes.

25 Q What was your understanding of what schedule

1 eight reflected?

2 A There was a gross amount basis points being
3 paid to the region. And if we paid the loan officers
4 less than that, then the differential would go to the
5 regional manager.

6 Q So, this exhibit reflects differentials that
7 in turn would resolve an additional compensation
8 being paid to you?

9 A Yes.

10 (Whereupon, Defendant's Exhibit Number 16
11 was marked for identification.)

12 BY MR. PERLOWSKI:

13 Q Ms. Spearman, I'm going to show you
14 Exhibit 16, which is a document that we received
15 within the last ten days or so from your counsel.
16 And I just want to ask you to -- and again, I'm going
17 to caution you on the attorney/client privilege
18 communications, I'm not asking you to reveal any of
19 those -- if you could tell me what Exhibit 16
20 reflects?

21 A It reflects the amounts deducted on monthly
22 recaps for ASA and desk rentals.

23 Q So these are amounts in addition to amounts
24 that are included in your original spreadsheet that
25 you provided on April 30th of 2020, correct?

1 A Yes.

2 Q So, you said ASA and desk rentals. Tell me
3 what -- what do you mean by ASA?

4 A ASA stands for Advertising Services
5 Agreement. So, it's generally an advertising
6 agreement or a desk rental with a real estate office,
7 is the most commonly way that is used, in which we
8 are subletting an office and/or paying for
9 advertising -- joint advertising services with a real
10 estate company.

11 Q Okay.

12 So you have an arrangement with a real
13 estate company to either do joint advertising or
14 sublet space to them?

15 A From them.

16 Q From them. Okay.

17 So you'd be subletting space, for example,
18 for a branch?

19 A Ya.

20 So, an office within a real estate company's
21 building in which a loan officer would work there out
22 of the real estate company's office.

23 Q So, in either case, whether it be a joint
24 advertising agreement or a sublet of space, these are
25 expenses that are being incurred by NAF?

1 A Yes.

2 Q And NAF would typically pay those expenses
3 directly?

4 A They would pay those expenses and then
5 deduct all or a portion of them from our override.

6 Q Okay.

7 Let me -- before I ask you more questions
8 about Exhibit 16, I wanted to go back and ask you
9 some more general.

10 With respect to a series of the exhibits
11 that we just discussed, you know, what I'm going to
12 call them the schedule composite exhibits, did you
13 ever see schedules that were being presented to
14 Ms. Allison by NAF?

15 A No.

16 Q Did you and Ms. Allison ever discuss any
17 schedules that may have been presented to her?

18 A No.

19 Q Do you recall any instance, to your
20 knowledge, whether through discussions with
21 Ms. Allison or otherwise, where a deduction was taken
22 from you, but not her?

23 A No.

24 Q Do you -- vice versa, do you recall any
25 situations where a discussion where a deduction was

1 taken from her but not you?

2 A Have you seen the monthly recaps?

3 Q I have a couple. I have a few that I'm
4 going to show you in a minute.

5 A Oh, okay. Ya. It's -- you can see on
6 there; if it's taken from her, it's taken from me.

7 Q Got it. Okay.

8 Do you recall ever being concerned, for
9 example, that maybe Ms. Allison was entering into a
10 schedule that might result in deductions being taken
11 from the region that might impact your comp
12 negatively?

13 A No.

14 Q Did you ever have that conversation with her
15 about how maybe what she was agreeing to might impact
16 your compensation as well?

17 A No.

18 Q Okay.

19 So just going back to Exhibit 16, just so
20 I'm sure I'm capturing my understanding of it.

21 An ASA would be an advertising services
22 agreement, so that would be something where you were
23 doing joint advertising with a real estate group?

24 A Yes.

25 Q And desk rental would be the situation that

1 you were referring to earlier where you're
2 effectively renting space?

3 A Yes.

4 Q Okay.

5 (Whereupon, Defendant's Exhibit Number 17
6 was marked for identification.)

7 BY MR. PERLOWSKI:

8 Q Ms. Spearman, I'm showing you what's been
9 marked as Exhibit 17, which is a schedule five you
10 appear to have e-signed on March 15th of 2018; do you
11 see that?

12 A Yes.

13 Q Do you recall agreeing that an -- that
14 your -- overrides would be reduced by \$713 a month
15 for payment of the Drake Realty's ASA?

16 A I don't remember the actual activity of
17 signing this, but yes.

18 Q Do you remember the -- the Drake Realty ASA
19 costs were being -- override bonuses were being
20 reduced by those costs?

21 A Yes.

22 Q Did you have any -- what other ASAs did you
23 have besides Drake Realty that you can recall?

24 A Real Estate Partners.

25 Q Any others?

1 A That's the only other one I can recall.

2 Q Do you know when the ASA with Real Estate
3 Partners originated?

4 A Early 2018, I believe.

5 Q What was the business relationship between
6 NAF and Real Estate Partners, in your words?

7 A We had an advertising services agreement
8 with them. And we had several -- I can't remember
9 how many desk rentals. They had multiple offices.
10 So we had desk rentals in each of their locations in
11 their office.

12 Q What -- just describe Real Estate Partners'
13 business to me, as you understood it. What do they
14 do?

15 A Real estate brokerage; list and sell homes.

16 Q So, if you were a consumer, you could
17 literally go in, identify a home you wanted to
18 purchase --

19 THE VIDEOGRAPHER: The time is 3:29 p.m., we
20 are off video record.

21 (Whereupon, a short break was taken.)

22 THE VIDEOGRAPHER: The time is 3:35 p.m., we
23 are back on video record.

24 BY MR. PERLOWSKI:

25 Q So I think when we broke briefly, before, I

1 was asking you, so with respect to the Real Estate
2 Partners relationship, a consumer could literally go
3 in, identify a home they wanted to purchase, and
4 literally have NAF in the building to potentially
5 service a mortgage need associated with that
6 transaction?

7 A Yes.

8 Q Okay.

9 And did the Real Estate Partners ASA
10 continue in effect throughout your tenure with NAF
11 after it was entered into, I think you said in
12 early '18?

13 A Yes. Although it was part of the Tennessee
14 market; so, that territory, therefore, that
15 relationship was removed from our region.

16 Q When was that -- when was the Real Estate
17 Partners relationship removed from your region and
18 moved to Tennessee?

19 A I believe that was September, October
20 of '19.

21 Q Who, to your knowledge, originated the Real
22 Estate Partners relationship?

23 A Myself and Kelly Allison, along with Janet
24 Hillis, the branch manager in Chattanooga.

25 Q Did Ms. Hillis have a relative who was

1 associated with Real Estate Partners?

2 A She did.

3 Q Who was that?

4 A Her sister was the founding starter of the
5 company. And the day-to-day was run by her nephew,
6 Ms. Hillis's nephew.

7 Q So those familia connections that caused you
8 to first learn about the Real Estate Partners
9 opportunity?

10 A Yes. That is what allowed us to obtain the
11 meeting when they were looking for a preferred
12 partner; but most of the meetings, to secure the
13 relationship, the agreement -- the ASA agreement and
14 the desk rentals were all done by Kelly and I.
15 Because the nephew did not want the familia
16 relationship to be the reason that he selected NAF.

17 Q Do you know whether Real Estate Partners was
18 looking at any other mortgage providers other than
19 NAF?

20 A They said that they did.

21 Q And is it desk rental just literally, like,
22 the cost of leasing the space?

23 A Yes.

24 Q Renting, leasing, whatever you want to call
25 it.

1 A (Nods head.)

2 (Whereupon, Defendant's Exhibit Number 18
3 was marked for identification.)

4 BY MR. PERLOWSKI:

5 Q Show you what's been marked as Exhibit 18,
6 Ms. Spearman, and this also is a document that we
7 received from your counsel within the last ten days
8 or so. And again, without asking you to reveal any
9 privileged communications, can you please identify
10 what Exhibit 18 reflects?

11 A The recruit deductions that were on each
12 monthly recap that were deducted from our -- mine and
13 Kelly Allison's override.

14 Q When you say, the recruit deductions, what
15 are you referring to?

16 A The five basis points that was paid to the
17 internal recruiter.

18 Q Okay.

19 When you were preparing Exhibit 18 -- sorry.
20 Let me ask this: Did you prepare Exhibit 18?

21 A I did.

22 Q And did you do that just by lifting numbers
23 from the monthly recaps?

24 A Yes.

25 Q Okay.

1 When you were preparing Exhibit 18, did you
2 make any effort to factor how the schedule sixes,
3 that you had signed, factored into that --

4 A No.

5 Q -- recruiting deduction?

6 A No.

7 Q So the sums on Exhibit 18 could indeed
8 reflect recruiting deductions that you specifically
9 agreed to during your employment with NAF?

10 MS. GIBSON: Objection. Form. Misstates
11 testimony.

12 BY MR. PERLOWSKI:

13 Q Please answer the question as asked.

14 A The numbers reflected on the spreadsheet do
15 not take into consideration anything to do with those
16 schedules.

17 Q So the numbers on the spreadsheet could, in
18 fact, include recruiting deductions that you
19 expressly agreed to during your employment with NAF,
20 correct?

21 MS. GIBSON: Same objection. Misstates
22 testimony.

23 THE WITNESS: I don't consider the schedule
24 sixes expressly agreeing to anything. So, no. I
25 would say no to that.

1 BY MR. PERLOWSKI:

2 Q Okay.

3 With the schedule sixes that you signed,
4 there's language that says, this recruiting deduction
5 will be split 50/50 with Kelly Morrison Allison. Are
6 you saying that you did not agree to the recruiting
7 deduction to be split with you and Ms. Allison when
8 you signed the recruiting allocation form?

9 MS. GIBSON: Objection. Form. And asked
10 and answered.

11 You can answer.

12 THE WITNESS: Referring back to the original
13 agreement, that clause is not applicable.

14 (Whereupon, Defendant's Exhibit Number 19
15 was marked for identification.)

16 BY MR. PERLOWSKI:

17 Q I show you what's been marked as Exhibit 19,
18 Ms. Spearman, which also is a document we received
19 within the last ten days from your counsel and I want
20 to ask you what it reflects.

21 A I took the -- to create this spreadsheet, I
22 took the deductions for bonuses to managers, our
23 downline managers, off of the monthly recap each
24 month and transferred it to this spreadsheet.

25 Q So, do the sums on exhibit -- sorry -- the

1 second column is total bonuses deducted; do you see
2 that?

3 A Uh-huh. Yes.

4 Q Do those amounts reflect the total bonuses
5 paid to downline managers within a given month?

6 A Yes.

7 Q So that's the -- so, for example, in
8 September of '17, \$42,970 were paid as bonuses to
9 downline managers?

10 A Yes.

11 Q Okay.

12 When you were preparing Exhibit 19, the
13 spreadsheet, section seven bonus to authorized
14 personnel, did you make any effort to examine the
15 schedule seven overrides authorized personnel that
16 you signed during your employment with NAF?

17 A No.

18 (Whereupon, Defendant's Exhibit Number 20
19 was marked for identification.)

20 BY MR. PERLOWSKI:

21 Q Let me show you what's been marked as
22 Exhibit 20, Ms. Spearman, which is another
23 spreadsheet that we received within the last ten days
24 with counsel and I want to ask you what it reflects.

25 A It reflects the ASA and desk rental cost for

1 the Real Estate Partners relationship that -- the
2 deductions that were taken from our override, mine
3 and Kelly's override on those given months.

4 Q So, if you -- is Exhibit 20 duplicative of
5 Exhibit 16? And I'm just asking because the
6 ultimate -- the totals are exactly the same --

7 A Yes.

8 Q -- \$33,310?

9 A Yes.

10 Q Okay.

11 So, in effect, Exhibit 16 also reflects the
12 ASA and desk rentals allocated to Real Estate
13 Partners?

14 A Yes.

15 Q Okay.

16 We've talked about the monthly recap reports
17 at points during the deposition today, Ms. Spearman.
18 You're familiar with those reports, generally, right?

19 A Yes.

20 Q What was the -- your understanding, what was
21 the purpose of those monthly recap reports?

22 A They were used to calculate commissions for
23 loan officers overrides for branch managers and
24 overrides for regional managers.

25 Q Who typically, to your understanding,

1 prepared the monthly recaps?

2 A New American Funding corporate, they had
3 compensation analysts that prepared them.

4 Q Compensation analysts who prepared them, do
5 you understand to whom they reported?

6 A I do not. And I use that term loosely. I
7 don't know if that was their exact title.

8 Q How did you receive the monthly recaps?

9 A Via email.

10 Q From whom?

11 A There may have been multiple people over the
12 time I was there. The one person that I can recall
13 the name was Dani or Danielle, I believe, Abril or
14 Abrillio (ph). I don't remember her name
15 specifically.

16 Q Danielle Abril?

17 A Yes.

18 Q A-b-r-i-l?

19 A Yes.

20 Q Maybe she went by Dani?

21 A Yes.

22 Q Okay.

23 A I believe she reported to Jan Preslo, but
24 I'm not certain.

25 Q To your understanding, monthly recap reports

1 went to all regions?

2 A Yes.

3 Q Who within the Southeast region was
4 typically responsible for reviewing those monthly
5 recap reports?

6 A Kelly's assistant, Sarah, reviewed them
7 commonly.

8 Q Was Sarah also your assistant?

9 A She -- her title was, you know, assistant to
10 Kelly Allison, and that was her primary
11 responsibility, but there was some crossover.

12 Q Did you have an assistant yourself?

13 A I did not.

14 Q So Sarah would occasionally pitch in and
15 help you out?

16 A That's right.

17 Q Okay.

18 So was Sarah typically tasked with the first
19 pass review of the monthly recaps?

20 A Yes.

21 Q Did anyone conduct a second pass review of
22 the monthly recaps?

23 A She would bring things to our attention
24 that, in most cases, would cause us to take a look at
25 those items in question.

1 Q Do you -- excuse me.

2 Did you recall generally reviewing each of
3 the monthly recap reports?

4 A Not in detail.

5 Q So, that would be my answer if someone asked
6 me if I reviewed the monthly partnership reports that
7 we get. I would say, you know, yes, but not in a
8 whole lot of detail.

9 But, you know, that -- I'm just talking for
10 me, I would typically open them up, I'd look at,
11 like, four or five different specific things, and
12 then I shut it down, that's the extent of my review
13 each month.

14 I'm just using that to understand, did
15 you -- understanding you may not have reviewed them
16 in detail, did you typically review the monthly recap
17 reports --

18 MS. GIBSON: Objection. Form.

19 BY MR. PERLOWSKI:

20 Q -- even if it was in -- even if it was in --
21 even in passing?

22 MS. GIBSON: Objection. Form.

23 You can answer.

24 THE WITNESS: Yes.

25 BY MR. PERLOWSKI:

1 Q And you had the opportunity to review each
2 of the monthly recap reports, right?

3 A Yes.

4 Q Did the region -- was the region asked to
5 approve each of the monthly recap reports?

6 A No.

7 Let me clarify that.

8 Q Please.

9 A Are you asking if I was required to complete
10 some sort of approval process?

11 Q No. I was asking if the region was
12 generally asked to approve the monthly recap reports,
13 could be as simple as, looks good, approve,
14 doesn't -- I'm not talking about any formal process.
15 I'm just asking, did the region typically have to --
16 was the region typically asked to approve the monthly
17 recap reports for accuracy?

18 A I would say reviewed them for accuracy, yes.

19 Q If -- if -- how do you pronounce Sarah's
20 last name? I just want to make sure I'm pronouncing
21 it correctly.

22 A Laprade.

23 Q Laprade? Okay.

24 Absent Sarah Laprade bringing things to
25 either yours or Kelly's attention, would you

1 typically raise concerns that you had regarding the
2 content of the monthly recap reports to anyone?

3 A We did.

4 Q You say, we did?

5 A Kelly and I both did on many occasions on
6 conference calls and in meetings face-to-face in
7 California.

8 Q Okay.

9 What concerns do you recall that either you
10 and/or Ms. Allison raised during these conference
11 calls and meetings regarding the monthly recap
12 reports?

13 A We expressed that we were not being paid per
14 our agreement.

15 Q Do you recall anything specific that you
16 and/or Ms. Allison said as to how you weren't being
17 paid per your agreement?

18 A We mentioned to them that there were loans
19 being excluded from our override that our agreement
20 indicated a deduction for those items was not
21 applicable to our agreement.

22 Q Which kinds of loans?

23 A Bond loans. Second mortgages. As we
24 discussed earlier, loans during the guarantee period.

25 Q Any other kinds of loans that were excluded

1 from your override that you thought was inconsistent
2 with your agreement?

3 A There were probably several others. Those
4 were the primary.

5 Q Earlier today, we -- and again, the record
6 will reflect what you and I specifically discussed,
7 but you talked about that there were concerns that
8 you would raise, I think, to Ms. Preslo, Mr. Reed,
9 Ms. Bunce, and they -- and I'm paraphrasing, but
10 Mr. Reed would refer to Preslo and Bunce. I think
11 maybe Ms. Bunce, you think you said she said she was
12 going to look into it, are these the same
13 conversations that you're referring to now?

14 A Yes.

15 Q Okay.

16 Do you recall anything more specific about
17 concerns that you raised to NAF about the monthly
18 recaps other than what we've previously discussed
19 during your deposition?

20 A No. Other than the multiple times that we
21 brought it up to them, multiple people, multiple
22 times.

23 Q And the multiple people, anyone else besides
24 Ms. Bunce, Ms. Preslo, and Mr. Reed?

25 A I know there was more discussion about it

1 after the 2019 leadership meeting, when there was,
2 you know, additional changes to the way we were being
3 paid. I believe we expressed our frustration with --
4 to -- to Patty Arvielo, possibly to Rick and Patty,
5 during those conversations that we felt we had not
6 been paid as agreed since we started. And that we
7 were yet now not being paid as agreed again. So, I
8 believe that was when -- at the time in which we
9 brought it up to the Arvielos.

10 Q Okay.

11 And I'll get to those conversations in a
12 moment.

13 A Okay.

14 Q Anything else that you can recall with
15 either Ms. Bunce, Ms. Preslo, or Mr. Reed that we
16 haven't discussed already today?

17 A Not at this time.

18 Q Okay.

19 (Whereupon, Defendant's Exhibit Numbers 21
20 and 22 were marked for identification.)

21 BY MR. PERLOWSKI:

22 Q Ms. Spearman, I'm going to show you what's
23 been marked as Exhibits 21 and 22. And I will
24 represent to you that these are, you know, email
25 exchanges with monthly report information attached.

1 And take a moment to familiarize yourself with them.

2 A Okay.

3 Q Looking at Exhibit 21, it appears to be --
4 there's some emails with Ms. Laprade on -- with
5 Ms. Laprade on August 7th after Ms. Abril forwards --

6 A Can I just ask a question?

7 Q Sure.

8 A So, you gave me an Exhibit 12 (sic) and 21;
9 is that correct?

10 Q 21 and 22.

11 MS. GIBSON: He should remark it. I think
12 he meant to mark it 21.

13 THE WITNESS: Just make sure I --

14 MR. PERLOWSKI: 21 and 22.

15 THE WITNESS: -- I just didn't want there to
16 be confusion.

17 MS. GIBSON: Let me see that one.

18 THE WITNESS: This one says 21. That one
19 looks like 12 to me, but --

20 MS. GIBSON: I think it's supposed to be 22.

21 MR. PERLOWSKI: Let's just make it more
22 clear. That's a handwriting issue on my end.

23 THE WITNESS: No worries. I just want to
24 make sure --

25 MR. PERLOWSKI: Thank you.

1 THE WITNESS: Uh-huh. Thank you. Okay.

2 21.

3 BY MR. PERLOWSKI:

4 Q 21 appears to be emails involving
5 Ms. Laprade on August 7th after Ms. Abril forwards
6 the July 2017 branch manager, area manager recap; do
7 you see that?

8 A Yes.

9 Q Okay.

10 So -- and then there's a spreadsheet
11 attached to the exhibit. Does that look like one of
12 the monthly recaps that you would have typically
13 received in 2017?

14 A A portion of it.

15 Q A portion of it? Okay. We'll get to that
16 in a second.

17 So if you look at the emails, Ms. Spearman,
18 it looks like Ms. Abril forwards the information on
19 Thursday, August 3rd. And then, Ms. Laprade responds
20 on August 7th asking some questions; do you see that?

21 A Yes.

22 Q Then it appears that Ms. Abril sends a
23 revision, which Ms. Laprade forwards, right --

24 A Uh-huh.

25 Q -- saying, Kelly and Gina, Dani has made the

1 revisions I requested. Will you please review and
2 approve the attached July AM/BM recap for payroll.
3 And then you say, I approve all but my guarantee
4 deduction; do you see that?

5 A Yes.

6 Q Okay.

7 Would Ms. Laprade typically ask you and
8 Ms. Allison to approve the monthly recap for payroll?

9 A I don't recall her sending that every single
10 time that we needed to approve it.

11 Q Okay.

12 And if you can look at Exhibit 22.

13 A Okay.

14 Q So again, I'm only asking you about the
15 emails.

16 A Yes.

17 Q There's a series of emails, but what I'm
18 most specifically interested in asking about is it
19 says -- on the first page, it says, December 7th,
20 good afternoon, everyone. I've reviewed and the
21 attached looks correct to me. Thank you, Dani.
22 Gina, do you approve? This is from Ms. Laprade to
23 you and then you say, I approve --

24 A Yes.

25 Q -- thank you, Sarah and Dani.

1 A Yes.

2 Q So, at least, we've looked at two
3 exemplars --

4 A Yes.

5 Q -- where Ms. Laprade has asked you -- one
6 time she asks both Ms. Allison and you, the second
7 time she asks just you to approve.

8 So, I think from what your testimony
9 earlier, but I want to make sure I understand it, you
10 said that that did not happen every month?

11 A No. This was early in the employment. We
12 were on -- Kelly and I were both on a guarantee in
13 the beginning of our employment. So it wasn't until
14 April to May. So we began in November of '16. And
15 April to May of '17 was when we first started to
16 receive the recaps.

17 Q Was that because you were going above your
18 guarantee?

19 A Yes.

20 Q Okay.

21 A Because we had a one-year guarantee; but in
22 April or May, I want to say it was the first time we
23 saw the document that would calculate our income.

24 And in those first couple of months is when
25 we were expressing, you know, why are these loans

1 being excluded, the ones we mentioned other -- you
2 know, earlier.

3 Q Uh-huh. Uh-huh.

4 A And that is when they were -- we're going to
5 look into it, we'll get back to you. That sort of
6 thing.

7 So, Sarah wasn't reviewing the recap for
8 that specifically. She was reviewing it -- you know,
9 there's every single loan that we closed in our
10 region, you know, on the recap. So, she was checking
11 for, you know, other -- other things.

12 In order for our downline managers to be
13 paid their bonus, we had to review and give
14 acknowledgement, you know, for -- in order for -- for
15 payroll to process.

16 Q Okay.

17 So let me make sure I understand that.

18 A Okay.

19 Q So, you said so -- the downline managers,
20 you're referring to the branch managers, production
21 managers, same group of people we talked about
22 earlier --

23 A Yes.

24 Q -- right?

25 So, before they received -- before payroll

1 was approved as to them, who had to approve -- who
2 had to approve it within the Southeast region?

3 A I don't think they had a specified person.

4 Q Okay.

5 Was it either you or Ms. Allison who had to
6 approve it?

7 A They never specified, you know, that both of
8 you must, one of you must, Sarah can do it. It was
9 an exchange of information, you know, each month.
10 And in the -- in the first couple of months, in which
11 we received them, that is when we expressed our
12 concern over loans being excluded. And, of course --

13 Q I'm trying to get back to -- okay. It
14 sounds like --

15 MS. GIBSON: You can finish your answer,
16 though --

17 MR. PERLOWSKI: Ya.

18 THE WITNESS: Okay.

19 BY MR. PERLOWSKI:

20 Q I thought you -- was finished. I didn't
21 mean to interrupt you. If you were not, please
22 continue. I thought you paused, so --

23 A I was going to say that when it became
24 apparent in those first couple of recaps, which would
25 have been around April or May --

1 Q Uh-huh.

2 A -- it became apparent that they were going
3 to continue to deduct or exclude certain loans. So,
4 our choices were leave, because they're not paying as
5 agreed, which would have caused pretty serious
6 reputational damage, because we brought 100 people;
7 business partners, builders, realtors.

8 The other option would have been to cause a
9 very, very big stink and create turmoil within, you
10 know, our relationship with corporate. And I
11 believed that if we did our job and grew the market,
12 that they would eventually pay as agreed.

13 Q Okay.

14 You could have also said, for example, on
15 Exhibit 22, right, instead of, I approve, you could
16 have said, I approve with the exception of these
17 issues as to me, right?

18 MS. GIBSON: Objection. Form.

19 THE WITNESS: In hind --

20 BY MR. PERLOWSKI:

21 Q You could have --

22 A -- in hindsight --

23 Q -- right?

24 A Sure.

25 Q Okay.

1 But you didn't, right?

2 MS. GIBSON: Objection. Form and
3 foundation.

4 BY MR. PERLOWSKI:

5 Q Please answer.

6 A I could have --

7 MS. GIBSON: Objection. Form.

8 THE WITNESS: I could have done that. I
9 could have done a lot of things.

10 BY MR. PERLOWSKI:

11 Q Okay.

12 For example, in Exhibit 21, you did say, I
13 approve all but my guarantee deduction, right?

14 A (Nods head.)

15 Q So you did raise an issue in Exhibit 21
16 about -- that you approve with a qualifier, correct?

17 A Yes.

18 Q But you didn't do that in Exhibit 22,
19 correct?

20 A Correct.

21 Q Okay.

22 So let's go back -- I want to go back to
23 just the approval process.

24 Understanding -- I understand the questions
25 that you have and that you discussed with others. I

1 want to get back to the conversations in connection
2 with the leadership meeting and thereafter in a
3 moment; but in just in terms of the process --

4 A Yes.

5 Q -- somebody had to sign off on -- in effect
6 for payroll to be run and for the downline managers
7 to be paid, right?

8 A Yes.

9 Q Okay.

10 So, do you know who had to -- who was able
11 to do that, the sign-off within the region?

12 A They didn't specify, but Sarah often did it.

13 Q Okay.

14 A I don't know if she used the words, we
15 approve, but she gave the okay for payroll.

16 Q Okay.

17 To whom would Sarah typically discuss
18 whether to give the okay?

19 A Dani.

20 Q Okay.

21 Would Sarah typically ask for your
22 permission to say we approve?

23 A To my recollection, she did not ask that
24 every month.

25 Q Sometimes she did, sometimes she didn't?

1 A Yes.

2 Q Do you know whether she would typically ask
3 Ms. Allison, who she was, you know, an executive
4 assistant to?

5 A Right.

6 Q Do you know whether she would typically ask
7 Ms. Allison for her approval before saying we
8 approve?

9 A I can't speak to that unless I was on the
10 same email.

11 Q Ya. No. I'm just asking for your general
12 awareness. I'm not asking about a specific document
13 or a specific instance. I'm just asking about your
14 -- if you had any general awareness as to whether
15 Sarah would --

16 A I don't think she would --

17 Q -- typically ask Kelly?

18 A -- I don't think she would do it completely
19 on her own.

20 Q Did you and Kelly ever discuss whether to
21 approve or not?

22 A No.

23 (Whereupon, Defendant's Exhibit Number 23
24 was marked for identification.)

25 BY MR. PERLOWSKI:

1 Q Ms. Spearman, showing you what's been marked
2 as Exhibit 23 and I actually want to -- if you could
3 just look at the spreadsheet that's attached. And I
4 apologize for the size of the print.

5 A I don't need to look at the email?

6 Q No. If you could just look at the
7 spreadsheet that's attached.

8 Did -- does this spreadsheet look like a --
9 the monthly recap format that you would typically
10 receive?

11 A One of them, yes. It changed several times
12 over time.

13 Q The format would change --

14 A Yes.

15 Q -- several times -- okay.

16 And I'm not asking you about any of the
17 specific, you know, loan data within --

18 A Okay.

19 Q -- but typically speaking, the monthly recap
20 would contain the kinds of information that's
21 included on Exhibit 23?

22 A Yes.

23 Q Do you know how the Southeast region
24 performed financially in 2018?

25 A I only know from what we were told.

1 Q Was 2018 generally a good or a bad year for
2 the industry; if you know?

3 A It was a good year for production.

4 Q Was it a bad year for something other than
5 production?

6 A There was margin compression the fourth
7 quarter of 2018.

8 Q Is margin compression typically something
9 caused by just competition?

10 A It's more market conditions.

11 Q Is margin compression just because -- I
12 think -- this is just based on my vague
13 recollection -- interest rates were really low at the
14 time, does that have something to do with it?

15 A Yes.

16 Q Did you have any -- so -- okay.

17 You said -- when I asked you the question,
18 do you know how the Southeast region performed
19 financially, you just said, no, other than what you
20 were told.

21 A Right.

22 Q What were you told?

23 A When we attended a meeting roughly November
24 of '18, so, close to the end of the year, we were
25 given what I would consider to be rave reviews as it

1 related to all of our scorecard criteria, which was
2 growth, retention, loan quality, customer service,
3 and profitability.

4 Q So profitability, you remember it being one
5 of the criteria in the scorecard?

6 A Definitely.

7 Q Okay.

8 The November '18 meeting, who attended that
9 meeting, to the best of your recollection?

10 A Christy and Jon for sure. Possibly Jan,
11 along with myself and Kelly.

12 Q Where was the meeting?

13 A Tustin.

14 Q Do you recall what was said about the
15 profitability of the region during the meeting?

16 A That we were the highest profitability of
17 all the regions. We won that year, the chairman's
18 award, which was a competition throughout the year
19 for all the regionals. And it was based off some of
20 the criteria I mentioned before; loan quality,
21 growth, profitability.

22 Q Do you recall anything being said during the
23 November '18 meeting about how the company was doing
24 as a whole?

25 A It was all positive, that the company was

1 doing well.

2 Q Any specifics shared other than the
3 company's doing well?

4 A Not that I recall, other than that they
5 were -- the company was profitable. The retail
6 division, specifically, was performing --
7 outperforming their expectations. And they may have
8 even shared a P and L for just our region at that
9 meeting. I don't recall the specifics of it because
10 we were exceeding their expectations. So, there was
11 not -- not a lot of cause for review.

12 Q Had you ever seen a regional P and L before,
13 November of '18?

14 A It's possible that we were shown a P and L,
15 again, to show that we were above their target for
16 profitability.

17 Q Do you know what the profitability target
18 for the region was in '18?

19 A It seemed to change. It was never a
20 criteria they gave us that we were required to meet.

21 Q Uh-huh.

22 A Simply you're at X, which is great, you
23 know, you've met our threshold of X; but it did seem
24 to change.

25 Q Do you recall any of the profitability

1 expect -- any of the profitability targets that you
2 were given?

3 A I do not.

4 Q So, like, for example, at the beginning of a
5 year, you know, we'll do the financial scrubbing from
6 the year before. A managing partner usually, in a
7 January meeting, will say something like, you know,
8 this is the expectation for -- like, we'll get that
9 conversation in January of '22 based on how '21 shook
10 out. We'll just be given a this is what -- this is
11 what we're looking ahead for this year; do you
12 remember anything like that being given to you?

13 MS. GIBSON: Objection. Form. Asked and
14 answered.

15 THE WITNESS: I don't recall any.

16 BY MR. PERLOWSKI:

17 Q Any profitability targets that were given to
18 you, do you recall how they were expressed, like, was
19 it in terms of we expect the profit of X percent or
20 we expect a profit of X dollars?

21 A I was never given targets, but -- we were
22 never given targets; but on the few occasions I saw a
23 P and L, the main conversation was around basis
24 points. So, net basis points as far as
25 profitability. It wasn't a dollar amount.

1 Q Do you recall what net basis points numbers
2 were being discussed in terms of a profitability
3 target?

4 A They were -- they ranged.

5 Q From what to what?

6 A I can't say for certain; but I would say
7 anything from 30 to 50 basis points net profit.

8 Q Was there any discussion in the November '18
9 meeting about possibly moving to a profit and
10 loss-based compensation model?

11 A Not to my knowledge.

12 Q Had you attended a leadership meeting before
13 the one in February of '19?

14 A Yes.

15 Q Did you attend one in '18?

16 A They would have two to maybe three a year.
17 So, I attended several.

18 Q And I know that we -- I think you testified
19 earlier that you do not -- you don't remember whether
20 the leadership meeting in '19 was in February or
21 March. I'm just going to call it the February '19
22 leadership meeting; is that okay?

23 A Yes. I'm almost positive it was in
24 February.

25 Q Okay.

1 So you had attended leadership meetings
2 before?

3 A Yes.

4 Q Did you ask to attend that meeting or were
5 you -- did you ask to attend that meeting or were you
6 asked to attend the February '19 meeting?

7 A We were asked to attend.

8 Q But would that have been typical?

9 A (Nods head.)

10 Q Yes?

11 A Yes.

12 Q Okay.

13 A Sorry. Yes.

14 Q No. It's fine.

15 A When they held a regional leadership
16 meeting, you were expected to attend.

17 Q Somebody from the region was expected to
18 attend?

19 MS. GIBSON: Objection. Form.

20 You can answer.

21 THE WITNESS: I can't speak for NAF's
22 expectations, but my thought is that they
23 expected the regional managers to be at the
24 regional manager leadership meeting.

25 BY MR. PERLOWSKI:

1 Q Okay.

2 Were all -- would typically other regional
3 managers also present at the leadership meeting in
4 addition to yourself?

5 A Yes.

6 Q How -- where did the '19 -- February of '19
7 leadership meeting take place?

8 A Tustin.

9 Q At NAF's corporate headquarters?

10 A Yes.

11 Q How long was the meeting?

12 A My memory is that normally, we -- in the
13 past, we had a joint meeting with all the regionals.

14 That particular meeting, that particular
15 visit, they did separate meetings with each regional
16 throughout the day. It may have even been over
17 two days. And then, we all joined for a dinner when
18 all the meetings were over; but I would say that the
19 meeting lasted a couple of hours. Our specific
20 one-on-one meeting with Jan, Jon, and Christy.

21 Q Okay.

22 That was a meeting specific to the Southeast
23 region?

24 A Yes.

25 Q So, you mentioned a number of times the

1 topic of a \$30 million shortfall had come up. Was it
2 in the two-hour meeting you just mentioned --

3 A Yes.

4 Q -- that the topic came up?

5 A Yes.

6 Q Okay.

7 So, in that -- so -- I just want to confirm,
8 the attendees in the two-hour meeting were whom?

9 A Kelly Allison, myself, Jon Reed, Jan Preslo,
10 and Christy Bunce.

11 Q Sorry.

12 So you, Kelly, Jon Reed, Jan Preslo, Christy
13 Bunce; did I miss anyone?

14 A I think that's it.

15 Q Okay.

16 So tell me what you recall hearing about a
17 \$30 million shortfall?

18 A They -- Christy was very concerned about the
19 stability of the company. She said we -- our P and
20 Ls have been redone. And although, we thought at the
21 end of last year, everything looked great, our P and
22 Ls have been revised, and we have a problem. And we
23 are going to have to take drastic measures, because
24 there has been a misallocation of \$30 million.

25 Q And this is Ms. Bunce speaking?

1 A Yes. She and Jon did most of the talking,
2 as I recall.

3 Q But as to this specific issue, it was
4 Ms. Bunce?

5 A I believe they both said the misallocation
6 part, but they both spoke.

7 Q Did they explain the misallocation or the
8 alleged misallocation to you?

9 A No. We asked many questions about it.

10 Q Okay.

11 So -- and granted, this may be parsing
12 words, but bear with me.

13 A Okay.

14 Q So shortfall, to me, I can note that that
15 means you have less than what you thought --

16 A Right.

17 Q -- right? That you're short of something.

18 Misallocation to me means instead of in
19 bucket A, you might put something in bucket B?

20 A Right.

21 Q You with me so far?

22 A Yes.

23 Q Okay.

24 They said it was a \$30 million
25 misallocation?

1 A They did.

2 Q Okay.

3 Did they explain at all the nature of the
4 misallocation of the funds?

5 A They used some terminology regarding CM1 and
6 CM2.

7 Q Okay.

8 Did you -- did that mean anything to you?

9 A On the few occasions I had seen a P and L in
10 the past, it always referenced CM1, which, when we
11 asked them what that meant, it was corporate margin
12 one.

13 Q Okay.

14 A And the first time I had ever heard of CM2
15 was in that leadership meeting when they were
16 discussing the misallocation.

17 Q To your understanding, did CM2 mean
18 corporate margin two?

19 A I would assume.

20 Q Okay.

21 Did anyone explain what the practical
22 meaning was of the misallocation from either CM1 to
23 CM2 or CM2 to CM1?

24 MS. GIBSON: Objection. Form.

25 You can answer.

1 THE WITNESS: It was just discussions about
2 expenses and just misallocation of -- of items
3 that was causing them major concern about the P
4 and L.

5 BY MR. PERLOWSKI:

6 Q Was the concern about like just the
7 integrity of the P and L or was the concern about the
8 financial position as a result of the
9 misallocation --

10 A Ask that again --

11 Q -- as you understood it?

12 A Ask that again, please.

13 Q Sure.

14 So going back to what we were talking about
15 earlier, misallocation just generally means that
16 instead of in one bucket, it's put in a different
17 bucket, right? And maybe, it should have been -- it
18 was inappropriately put in a certain bucket?

19 A Right.

20 Q So -- and look, that's -- that's not ideal,
21 but it doesn't necessarily mean that the company's
22 lost money as a result of the misallocation --

23 A Uh-huh.

24 Q -- do you know what I mean?

25 A Right.

1 Q Did anybody ever explain to you that NAF had
2 lost money because of the misallocation?

3 MS. GIBSON: Objection. Form.

4 THE WITNESS: They did not specifically --
5 they did not specifically say that. They did
6 state that they took responsibility in some ways
7 in saying they felt like the financials have not
8 been properly managed, because they don't have a
9 CFO.

10 BY MR. PERLOWSKI:

11 Q Okay.

12 Had NAF had a CFO at some point in time, to
13 your knowledge?

14 A Not to my knowledge.

15 Q Okay.

16 A I believe Jason Obradovich handled -- who
17 was the head of the secondary marketing -- handled
18 most of the financial P and L.

19 Q In this misallocation, to your
20 understanding, was this companywide or was it
21 specific to a particular region?

22 A It was companywide.

23 Q And just -- sorry -- I didn't mean to
24 interrupt.

25 A I was just going to say, because they said

1 it was, and also the other regionals, in speaking to
2 the other regionals, they were communicated the same
3 information.

4 Q Did you have a conversation with any other
5 regional about the misallocation of \$30 million?

6 A Yes. We -- Kelly and I both spoke to most
7 of the other regionals.

8 Q Did anyone indicate to you that it was --
9 that the issue was something other than just a
10 misallocation of funds as opposed to a shortfall of
11 funds?

12 A No one really spoke to that. They spoke to
13 the fact that the other regionals thought that
14 corporate believed that the regionals made too much
15 money and that this was a method to reduce our
16 compensation.

17 Q During the leadership meeting, were you ever
18 given any numbers as to how NAF performed as a whole
19 in 2018; in other words, for example, how much profit
20 NAF made in 2018?

21 A No.

22 Q Did you ask, like, how NAF performed in
23 2018?

24 A No.

25 Q Did anyone tell you that the regions made

1 too much money at the leadership meeting?

2 A You mean, Jon, Christy, or Jan?

3 Q I said anyone.

4 MS. GIBSON: Objection. Form.

5 BY MR. PERLOWSKI:

6 Q So, did anyone tell you at the leadership
7 meeting -- did anyone tell you at the leadership
8 meeting that the regions made too much money?

9 A Other than the other regionals, no one else
10 told me that directly.

11 Q Okay.

12 So, neither Christy, Jon, nor Jan told you
13 that the regions made too much money?

14 A No.

15 There was another meeting.

16 Q Go ahead.

17 You said there was another meeting; when?

18 A About this topic.

19 Q When?

20 A So, each region was met with individually.
21 Then we all went to dinner with Rick and Patty and
22 the regionals, Jon, Jan, Christy, the leadership
23 team, the executive team. And it was a, we're going
24 to get through this, you know, just stick with us
25 kind of thing, kind of dinner.

1 And at that point, I think each regional was
2 communicating with Jon, Jan, and Christy about, you
3 know, their marketing budget being eliminated, how
4 they're going to handle their PEs. And all those
5 things.

6 So, the regionals started talking amongst
7 each other, after they left the meeting, over the
8 next week or two. And it was decided that there may
9 be a better way to resolve this problem that NAF is
10 having.

11 So, the regionals decided to ask Rick and
12 Patty, because they weren't a part of the individual
13 meetings that we had. Someone spearheaded -- I can't
14 remember which regional, it wasn't Kelly and I, but
15 they spearheaded, hey, let's fly out to corporate on
16 our own dime, to California, in an effort of good
17 faith, to show them that we want to be part of the
18 solution, but that maybe there's a better way to do
19 this. Maybe -- we just need to understand more about
20 what the real problem is.

21 Q So the second meeting that you were just
22 referencing is this follow-up meeting where you flew
23 out to California?

24 A Yes. We all --

25 Q Some weeks after the leadership meeting?

1 A Yes.

2 Q Okay.

3 I'll get to that in a second.

4 A Okay.

5 Q So, with respect to the -- going back to the
6 leadership meeting, did you learn of NAF's changes
7 with respect to marketing expenses during the
8 two-hour meeting that you mentioned earlier?

9 A Yes.

10 Q And did you learn about NAF's changes with
11 respect to the absorption of pricing expenses in the
12 two-hour meeting?

13 A Yes.

14 Q So, with respect to the change as to pricing
15 exceptions, who was communicating that change?

16 A Jon and Christy did it jointly. Primarily
17 Christy.

18 Q And the change that was announced to you
19 would be that the regions would have to absorb any
20 exceptions above the new tolerance level?

21 A I do not recall if the tolerance level --
22 that specific tolerance level was discussed in that
23 meeting, but that pricing exceptions were going to
24 have to change drastically and no more marketing
25 budget.

1 Q Okay.

2 With respect to the pricing exception --

3 A Yes.

4 Q -- you remember it's that they -- that
5 Mr. Reed and Ms. Bunce, primarily Ms. Bunce, did the
6 talking and said that pricing exceptions would have
7 to change dramatically. What did she specifically --
8 what do you recall her saying?

9 A We're not going to be able to approve all
10 these marketing exceptions. And you guys are going
11 to have to absorb them if you want to do them.

12 Q You said marketing exceptions?

13 A I'm sorry.

14 Q You mean pricing exceptions?

15 A Pricing exceptions.

16 Q So she said you guys are going to have to
17 absorb them if you want to do them?

18 A (Nods head.)

19 Q Was there any recommendation one way or the
20 other about whether that -- whether the regions
21 should still continue to make loans that require
22 pricing exceptions?

23 A I think everyone at that meeting is
24 experienced enough to know there was no realistic way
25 to publish all pricing exceptions.

1 Q Was there a realistic way to significantly
2 reduce them but not abolish them?

3 A Not in my opinion.

4 Q Okay.

5 Why not?

6 A Because the level of pricing exceptions that
7 we had been approving were necessary to compete in
8 our marketplace to be competitive with like lenders.

9 Q Did you ever have -- did you ever conduct
10 any kind of -- or have conducted any kind of analysis
11 as to what other lenders were doing with respect to
12 pricing exceptions?

13 A We often did market analysis just on
14 checking where other lenders were with their rate
15 offering, so that we knew where we stood; but not
16 about how they -- each company handled pricing
17 exceptions.

18 Q Did you -- is -- I would assume that that
19 information, with respect to what a specific company
20 does with respect to pricing exceptions, is typically
21 kept confidential?

22 A I would say yes.

23 Q So, like, company A doesn't want company B
24 to know what it does with respect to pricing
25 exceptions?

1 A Right.

2 MS. GIBSON: Objection. Form.

3 BY MR. PERLOWSKI:

4 Q Okay.

5 A Yes. You could easily, generally, find out
6 from other loan officers at other companies what rate
7 they're offering, what rate they're able to offer,
8 but not the back end of how they're arriving at that.

9 Q Okay.

10 When you left the leadership meeting, had
11 the new tolerance level been communicated?

12 A It was still in discussion.

13 Q Okay.

14 When did the change with respect to pricing
15 exceptions go into effect?

16 A I believe it was March 1.

17 Q So it was prospective from the leadership
18 meeting?

19 A It was on or about March 1.

20 Q After the leadership meeting?

21 A Correct.

22 Q To your understanding, was -- were regions
23 treated differently at all with respect to the change
24 in the pricing exception policy, like in any way,
25 like, for example, did a certain region have a

1 different tolerance level than others or was a
2 certain region asked to absorb only certain costs but
3 not others?

4 A I don't know.

5 Q Okay.

6 To your knowledge, every region was treated
7 the same?

8 A I don't know either way.

9 MS. GIBSON: Asked and answered.

10 BY MR. PERLOWSKI:

11 Q Okay.

12 What was said to you about the change with
13 respect to marketing expenses going forward at the
14 leadership meeting?

15 A That all marketing expenses would be the
16 responsibility of the regionals. There would be no
17 marketing expenses paid by corporate.

18 Q Did corporate typically provide marketing
19 support for the regions?

20 A Yes.

21 Q So I'm trying to make a distinction between
22 an expense -- a marketing expense, for example, that
23 the region decided to spend, like you mentioned the
24 TV -- the TV --

25 A Yes.

1 Q -- program, right?

2 That's being done at the regional level that
3 you and/or Ms. Allison decide, you know, we want to
4 -- we think this is a good way to drum up business,
5 so we want to spend this money?

6 A Right.

7 Q Were there typically marketing expenses that
8 corporate covered, for example, like or -- strike
9 that.

10 Were there typically kinds of marketing
11 support that corporate provided the Southeast region
12 independent from expenses that the region decided to
13 spend -- to incur?

14 A I can't think of any other than just maybe
15 maintaining a company website. I can't think of any
16 other marketing expenses.

17 Q With respect to the policy going forward,
18 for the marketing expenses that the region would have
19 to absorb, were those only marketing expenses that
20 the region decided to spend as opposed to -- or was
21 it even, for example, it costs us X dollars to
22 maintain a website, so we're going to allocate a
23 percentage of those costs to the region?

24 MS. GIBSON: Objection. Form.

25 THE WITNESS: What they abolished was

1 region-specific marketing.

2 BY MR. PERLOWSKI:

3 Q Okay.

4 So they didn't -- no. You used the word
5 abolished regions specific marketing.

6 They didn't abolish it, right?

7 MS. GIBSON: Objection. Form.

8 BY MR. PERLOWSKI:

9 Q They didn't say you couldn't spend the
10 money, right?

11 MS. GIBSON: Objection. Form.

12 THE WITNESS: Correct.

13 BY MR. PERLOWSKI:

14 Q They just said, if you decided to spend it,
15 you're going to have to absorb it?

16 A Correct.

17 Q Okay.

18 And that policy change was prospective as
19 well, right?

20 A Yes.

21 Q When did that go into effect?

22 A I believe at the same time.

23 Q Were there any exceptions for your region
24 that were granted?

25 A Not to my knowledge. We asked them to make

1 the exception for Atlanta's Best New Homes TV show,
2 just because it was a large expense that they knew
3 about before we joined. And given the fact we had
4 the seven-and-a-half basis points marketing budget in
5 Kelly's agreement.

6 Q Ms. Allison had a 7.5 percent basis points
7 in her agreement?

8 A Correct.

9 Q That was not in yours, correct?

10 A It wasn't; however, the way -- as you see
11 the recaps, the way they're calculated, the marketing
12 is deducted from the total override before the split
13 is applied. So, if she has a marketing budget, then
14 I benefit from that.

15 Q Okay.

16 But there was no marketing budget in your
17 agreement, correct?

18 MS. GIBSON: Objection. Asked and answered.

19 THE WITNESS: That is correct.

20 BY MR. PERLOWSKI:

21 Q And there was no marketing budget in your
22 offer letter, correct?

23 A Correct.

24 Q So, what was the response, the request for
25 an exception regarding Atlanta Best Homes?

1 A No.

2 Q Who said that?

3 A Christy.

4 Q After the policy change, did you and
5 Ms. Allison discuss whether you were going to
6 continue making regional spend knowing that that was
7 going to be absorbed out of your --

8 A Yes.

9 Q You did.

10 And what did you and she decide?

11 A That we couldn't change our commitment to
12 our loan officers, branch managers, builders and
13 realtors. So even though it was being changed for
14 us, in order to maintain our business and grow at the
15 same rate, we would have to continue the marketing
16 expenses.

17 Q What kinds of marketing expenses did you
18 and -- and/or Ms. Allison decide to continue to incur
19 after the change in policy and announce at the
20 leadership meeting?

21 A The biggest one being Atlanta's Best New
22 Homes. I'm sure you could get a list of all the
23 invoices from NAF to give you a detailed account of
24 all the marketing. There's lots of different things.

25 Q So, what, typically, would occur is that the

1 region would incur the expense, send it to corporate
2 for payment, and then it would be offset against
3 your --

4 A It would be subtracted from our override.

5 Q Subtracted from the override at the -- okay.

6 Who -- who made the decision within the
7 Southeast region as to what marketing expenses to
8 incur?

9 A Kelly and I.

10 Q Did -- did you both typically have -- agree
11 on a marketing expense or did you each have the
12 discretion to decide what to spend on your own?

13 A We were pretty much in sync. We were
14 partners, so we talked on a daily basis, and most
15 things were discussed and agreed upon.

16 Q Did you ever -- now, I'm not referring to --
17 for the purpose of my next question, I'm not
18 referring to expenses that were submitted for payment
19 to corporate and that were then deducted from yours
20 and Kelly's compensation. I'm not referring to
21 expenses that went through that process.

22 Did you ever personally pay out of pocket
23 any expenses for the Southeast region; like, you
24 know, did you actually cut the check or credit card
25 or what have you --

1 A Uh-huh.

2 Q -- you cut the payment yourself?

3 A Uh-huh. Yes.

4 It was customary that primarily for air
5 fare, hotel, certain lunches or dinners, if those
6 costs exceeded NAF's policy and procedure manual
7 amount, they had set amount that you could spend for
8 a hotel room and for a flight and for dinner, lunch,
9 breakfast, if the amount exceeded what they would
10 reimburse us for, then we'd pay that overage.

11 Q So, when you would say -- say you're
12 traveling and the hotel limit is 200 bucks a night
13 and you decide, you know what, I'm going to treat
14 myself and I'm staying at the Four Seasons tonight;
15 typically, a Four Seasons higher than a \$200 a night,
16 would you just submit a reimbursement for \$200 then
17 and eat the rest?

18 A That's correct.

19 MS. GIBSON: Objection. Form.

20 BY MR. PERLOWSKI:

21 Q Okay.

22 A I'm not agreeing to the fact that we stayed
23 at the Four Seasons --

24 Q No. I'm just -- I'm just -- I just used it
25 as an example --

1 A Yes. We paid the -- we only submitted the
2 amount allowed.

3 Q Okay.

4 I was just using the Four Seasons as an
5 example --

6 A Let me be clear.

7 MS. GIBSON: That's where lawyers and I'll
8 go on Gregory's --

9 BY MR. PERLOWSKI:

10 Q -- that would typically have a higher
11 expense.

12 A Understood.

13 Q Could have used others, but that's the --

14 A Uh-huh.

15 Q -- first one that popped into my head.

16 A It's a nice hotel.

17 Q Did you ever do any kind of return on
18 investment analysis of the Atlanta Best Homes TV
19 show?

20 A No.

21 Q So you don't know one way or the other about
22 whether the Atlanta Best Homes appearances on
23 television ever specifically brought business to NAF?

24 A Because we were heavily involved in builder
25 business and the growth of our region with builders,

1 national and regional builders, we attribute part of
2 that to the branding of that show. Because all
3 builders pay attention to that show and watch that
4 show. So, that would be my --

5 Q So the show, the Atlanta Best Homes, had a
6 branding value, but you can't put a dollar value
7 associated with that, correct?

8 A Well --

9 Q A return on investment dollar value
10 associated with that?

11 A We did have a source code for it. And we
12 were able to track actually loans generated from
13 people that called into New American Funding, because
14 we had designated loan officers. So, we did have
15 reporting to show that people called in for a loan
16 from watching the show.

17 Q Okay.

18 What was that -- do you remember what that
19 source code was?

20 A I don't, but it had -- it was obvious that
21 it was Atlanta's Best New Homes, it may have been
22 abbreviated.

23 Q For any of the other marketing expenses that
24 the Southeast region incurred after a change in
25 policy announced in the leadership meeting, did you

1 ever do any kind of return on investment analysis to
2 determine whether a specific expense actually
3 resulted in specific business?

4 A Other than the fact that we went from \$0 to
5 about two billion a year in production, no. No other
6 specific analysis.

7 Q You said you went from zero to two billion
8 in production. From zero would be in 2016 when you
9 started?

10 A Correct.

11 Q And two billion was when?

12 A Definitely in 2020, we were close to that.
13 In 2019, maybe one and a -- 1.7 billion in 2019.

14 Q So 1.7 billion in production in '19?

15 A Yes.

16 Q So through the end of '19 you were at
17 1.7 billion in production?

18 A Close to that. I cannot remember the exact
19 amount.

20 Q Do you recall what you were in production
21 for the first quarter of '20?

22 A I do not. I know they did over two billion
23 in '20.

24 Q In '20 as a whole?

25 A Correct.

1 Q When did NAF expand into Tennessee?

2 A It was when we hired Janet Hillis.

3 Q Okay.

4 A And I'd -- would have to check with NAF on
5 her hire date --

6 Q So whatever that hire date --

7 A Yes.

8 Q -- that would correspond to when --

9 A I want to say it was, like, late '18. I'm
10 sorry. No. It would have been -- it would have been
11 early '18; but please check that date.

12 Q Sure. Will do.

13 Ms. Hillis was in Chattanooga --

14 A Yes.

15 Q -- is that right?

16 So Chattanooga was the first NAF branch in
17 Tennessee?

18 A Yes.

19 Q Did you expand to any other Tennessee
20 locations after Ms. Hillis joined, whenever that was?

21 A Yes. We expanded into Nashville.

22 Q Anything else besides Nashville and
23 Chattanooga?

24 A Franklin.

25 Q Franklin's a suburb of Nashville?

1 A It is; but we opened a separate office
2 there.

3 Q Was the opening in Nashville, did that
4 coincide with the hiring of Eric Fellows and Michele
5 Hoefle?

6 A Yes.

7 Q Were they in Franklin as well?

8 A Yes.

9 Q When did NAF expand into Virginia?

10 A That was after Michele and Eric as well.
11 They recruited Daniel.

12 Q So whenever Daniel was hired?

13 A Yes.

14 Q Were you involved in the recruitment of
15 Daniel?

16 A I was involved in a couple of the meetings
17 with Daniel in Atlanta, but it was primarily Eric and
18 Michele.

19 Q And you were involved in the meetings to
20 recruit Daniel in Atlanta as part of your job duties
21 as regional manager?

22 A Yes.

23 Q And you were paid a base salary as well,
24 right?

25 A I was not.

1 Q You were not paid a base salary?

2 A I was not.

3 We were paid a draw.

4 Q Okay.

5 Explain how the draw worked.

6 A It's a nominal amount of money. It's based
7 on an hourly rate, I believe. And it's in the
8 agreement, but then it is deducted from the override.

9 Q Got it.

10 A Draw against the override.

11 Q So -- and I'm referring back to Exhibit Two.
12 In article 5.1 it says, salary, manager will be paid
13 a salary of \$1,760 biweekly?

14 A Uh-huh.

15 Q Is that what you're referring to as a draw?

16 A Yes.

17 Q Okay.

18 A It's deducted.

19 Q Did NAF expand into any other locations in
20 Virginia aside from the branch that Daniel was
21 involved with?

22 A No.

23 Q No?

24 A No.

25 Q Okay.

1 A He may have opened another satellite, there
2 may have been two locations, but they were both under
3 Daniel.

4 Q And you said Michele and Eric were
5 principally involved in bringing Daniel onto NAF?

6 A Yes.

7 Q Did you invest any personal funds in any --
8 any associated with bringing Daniel onto NAF?

9 A Personal funds?

10 Q Yes.

11 A No.

12 Q And did you receive override bonuses on
13 loans that were originated out of Virginia?

14 A Yes.

15 Q Okay.

16 A But I believe Daniel's override outweighed
17 the -- the loans override, therefore, it was probably
18 a net zero or negative; but yes.

19 Q Were you involved in bringing Eric Fellows
20 to NAF?

21 A Yes.

22 Q Was -- who else was involved in bringing
23 Eric Fellows to NAF, if anyone, besides yourself?

24 A Kelly and I.

25 Q Kelly -- Kelly and yourself?

1 A Yes.

2 Q Was Janet Hillis involved in bringing Eric
3 Fellows onto NAF?

4 A Janet referred Eric to talk to us. She was
5 not involved in his recruitment.

6 Q So the initial contact with Eric was through
7 Janet?

8 A Yes.

9 Eric had been recruiting Janet at his former
10 company, when she was considering NAF. So she,
11 basically, was considering NAF or Eric Fellows former
12 company and she chose NAF. So when Eric then chose
13 to make a move, he called Janet and asked her how she
14 liked NAF.

15 Q Who was involved in bringing Michele Hoefle
16 onto NAF?

17 A Eric and Michele were together. So --

18 Q At the other company?

19 A Yes.

20 Q So they were a package deal, in effect?

21 A Yes.

22 Q Did you supervise Mr. Fellows?

23 A (No response.)

24 Q Sorry.

25 Did he report to you?

1 A Yes. He reported to Kelly and I.

2 Q Did Mr. Hof -- did Ms. Hoefle report to
3 Kelly and you or to Mr. Fellows?

4 A To Kelly and I. They were -- they were
5 partners.

6 Q Did either yourself or Ms. Allison ask Eric
7 and/or Michele to absorb any costs associated with
8 the Real Estate Partners relationship after the
9 February leadership meeting?

10 A We did not ask them to absorb the desk
11 rental and AA, the actual costs; but the compensation
12 to the loan officer on that account was a reduced
13 compensation, which was common for a real estate
14 alliance or a house account, a captured builder, that
15 you reduce the loan officer compensation. And they
16 did not like that.

17 Q How was the loan officer compensation
18 reduced?

19 A It was 90 basis points. It was considered a
20 house account because of the expense of the account.

21 Q Did the compensation -- did the loan officer
22 compensation with respect to Real Estate Partners,
23 did that change after the February leadership
24 meeting?

25 A No.

1 Q Okay.

2 So, with respect to the loan officer reduced
3 compensation, what, to your -- basically, your
4 understanding, what did Eric and Michele not like,
5 what was the -- what was the issue that they had,
6 your understanding?

7 A Their marketing budget was reduced.

8 Q Their marketing budget was reduced?

9 A Yes.

10 Q By whom?

11 A When ours was done away with, Kelly and I
12 reduced their marketing budget.

13 Q Did you just tell them that they had less
14 dollars to spend?

15 A Yes.

16 Q Did you tell them that if they spent dollars
17 over -- over whatever the reduced budget was, that
18 they were going to have to absorb those costs?

19 A I don't remember having that specific
20 conversation.

21 Q What was their marketing budget reduced,
22 like from what to what, if you recall?

23 A I don't remember the numbers.

24 Q Do you remember the amount of the reduction,
25 either in dollars or a percentage?

1 A I do not, but that's easy to obtain.

2 Q Okay.

3 Do you know when that deduction went into
4 effect for Eric and Michele?

5 A I don't remember the exact date.

6 Q Was it around the same time the change in
7 marketing expense policy went into effect for the
8 Southeast region?

9 A I think it was later. Because I believe we
10 were trying to give the 90 days to see if indeed NAF
11 would -- we didn't want anyone to have to be
12 subjected to the change. So I believe we waited the
13 90 days.

14 Q So --

15 A And -- ya.

16 Q Sorry. Go ahead. Please --

17 A And when we saw that, even after asking,
18 that NAF was not going to change, I believe that was
19 when -- so it was probably several months after ours
20 went into effect.

21 Q So is it fair to say, based on what you just
22 said, for the first 90 days or so, you did not change
23 anything with respect to Eric and Michele's marketing
24 budget and it was only after --

25 A That's my recollection.

1 Q Okay.

2 Did you -- do you recall attending a meeting
3 in Chattanooga with Eric and Michele where they
4 expressed their displeasure about the change in their
5 marketing budget?

6 A Yes.

7 Q When did -- do you recall, roughly, when
8 that meeting took place?

9 A I don't. I would say late summer.

10 Q Of '19?

11 A Yes.

12 Q Who attended that meeting?

13 A Kelly and I were there in Chattanooga for a
14 Real Estate Partners special event. So, we were
15 already there for something. And Eric and Michele
16 were there from Nashville in Chattanooga for the same
17 event. And we met with them to review some things
18 before the event. So it was the four of us.

19 Q And no one else present other than the four
20 of you?

21 A That's correct.

22 Q During that discussion, was there any -- did
23 the topic of them potentially reporting to corporate
24 come up?

25 A Yes.

1 Q Tell me about that.

2 A They were dissatisfied with the reduction in
3 their marketing budget and continued -- had been for,
4 at least, a few weeks prior to the meeting. And then
5 at the meeting, were expressing their frustration
6 over things being changed. And we repeatedly -- they
7 were asking us questions we couldn't answer; why is
8 this happening? How did, you know, NAF misallocate
9 money? You know, questions that we had the same
10 questions and we couldn't get answers to.

11 So we just, after several times of telling
12 them, you're welcome to call corporate yourself and
13 ask them these questions -- at one point, Kelly said
14 to them, if you guys just want to report to
15 corporate, you can do that.

16 Q Meaning report to corporate directly as
17 their own region?

18 A Correct.

19 But she said, if you do that, Chattanooga is
20 our market. We started it. We grew it. And we gave
21 it to you when you came on board.

22 Q So when Ms. Allison was suggesting that Eric
23 and Michele could report directly to corporate and,
24 you know, outside of the Southeast region, what was
25 your understanding of what area she was offering them

1 to split off with?

2 A Whatever they brought. Whatever they
3 brought and whatever they recruited and grew --

4 Q Okay.

5 A -- which was Nashville.

6 Q So Nashville and Virginia?

7 A At this point, Daniel was no longer with us.

8 Q Okay.

9 A So there was no Virginia.

10 Q Okay.

11 A At that moment.

12 Q Did -- was there a Virginia --

13 A Let me clarify that.

14 There may have still been one or two loan
15 officers in Virginia left, but Daniel was not there.

16 Q Okay.

17 Was there any contemplation that Virginia
18 would go with them instead of staying within the
19 Southeast region, because Eric and/or Michele were
20 responsible principally for recruiting Daniel?

21 A In my opinion, anything that was under their
22 management, in her comment, I felt like was free to
23 go with them other than Chattanooga.

24 Q Was Virginia under their management?

25 A Yes.

1 Q Okay.

2 So, in terms of the dividing things up, in
3 your mind, Chattanooga stayed, but the rest -- but
4 anything else left?

5 A I don't know that I took it seriously, that
6 they were going to do that.

7 Q Okay.

8 A I think it was a -- they were frustrated.
9 Honestly, it was almost like they're frustrated with
10 the same thing we're frustrated about, right? We're
11 all frustrated that our comp's being cut when we'd
12 done nothing but do what we said we would do.

13 So, I thought it was a frustration. Kelly
14 gave them the out. And I didn't necessarily think
15 that was going to come to fruition.

16 Q Okay.

17 Did you -- did you -- do you recall saying
18 anything -- understanding that you didn't think that
19 this was going to come to fruition, do you recall
20 saying anything to them about whether you were okay
21 with them splitting off?

22 A I do not believe I commented on it.

23 Q Okay.

24 Do you recall having a conversation with
25 anyone at NAF about the possibility of them splitting

1 off after the meeting in Chattanooga?

2 A I do not. I remember giving -- I believe
3 Jan Preslo, we updated her, during that time period,
4 about their frustration with the cutting of marketing
5 expenses, but I don't remember discussing the
6 break-off at any time.

7 Q Okay.

8 Do you recall ever hearing from anyone at
9 NAF that Eric and Michele were dissatisfied about the
10 fact that their marketing budget was being reduced by
11 a decision made by either you or Ms. Allison?

12 A No.

13 Q Other than -- after the -- other than the
14 discussion in Chattanooga about the possibility that
15 they -- that Eric and Michele split off, do you
16 recall, I think, another conversation with them about
17 the possibility of them splitting off?

18 A With Eric and Michele?

19 Q Yes.

20 A No.

21 Q Do you recall having any follow-up
22 conversations with Kelly Allison about the
23 possibility of Eric and Michele splitting off?

24 A I don't recall having any other
25 conversations about that until we received the phone

1 call from Christy stating that they had made the
2 decision -- that NAF had made the decision to do
3 that.

4 Q Okay.

5 Do you recall when that conversation with
6 Christy occurred?

7 A September, October of '19.

8 Q Okay. What did -- what did -- sorry.

9 September or October of '19, so within a
10 month or two of the Chattanooga meeting?

11 A I would say so.

12 Q Okay.

13 Do you recall what Christy told you?

14 A She said, we are removing Tennessee and
15 Virginia from the Southeast. Eric and Michele want
16 to report directly to corporate. And we have agreed.

17 Q Do you recall saying anything in response to
18 that news?

19 A We said, that's fine, but we -- we're
20 keeping Chattanooga.

21 Q You said we said. So Ms. Allison was on
22 this call as well?

23 A Correct.

24 Q So, I just want to just log -- just lockdown
25 the participants.

1 So, Ms. Bunce was on the call, you were on
2 the call, Ms. Allison was on the call; anyone else?

3 A Jan Preslo.

4 Q Jan Preslo.

5 Do you recall anyone else being on the call?

6 A I think Jon might have been on there, Jon
7 Reed.

8 Q Okay.

9 And just -- was this a phone call or was it
10 a -- like -- look, I know, recently, NAF uses
11 Microsoft Teams. And so, you know, we're fine
12 communicating with them oftentimes through a Teams
13 meeting; do you recall, was it a phone call, was it
14 a --

15 A Phone call.

16 Q -- video conference of any kind?

17 A It was not a video conference.

18 Q Okay.

19 That may be the product of COVID and life
20 going forward from COVID.

21 A Yes.

22 Q Who -- who said about we're keeping
23 Chattanooga?

24 A I don't remember; but one of us.

25 Q Either yourself or Ms. Allison, but you

1 don't remember?

2 A Yes.

3 Q Who was the branch manager in Chattanooga?

4 A Janet Hillis.

5 Q Okay.

6 When you said, we wanted -- we want to keep
7 Chattanooga, what was said in response?

8 A We've made the decision to also allow
9 Chattanooga to go with Tennessee, with Eric and
10 Michele.

11 Q But did you -- what did either you or
12 Ms. Allison say in response to that, that you recall?

13 A We strongly disagree with this decision, can
14 you please tell us why you made that decision, given
15 we recruited it, nurtured it, invested in it.

16 Q What were you told in response to your
17 expressing -- and I say, your, I'm referring to you
18 and/or Ms. Allison -- when you expressed your
19 disagreement with -- and Chattanooga was going to be
20 going with Eric and Michele, what were you told, if
21 anything?

22 A We were told that there were some HR-related
23 issues that they couldn't disclose. And that they
24 spoke to Janet and asked her if she wanted to go with
25 them, with Eric and Michele. And that Janet had

1 said, yes, she wanted to go with Eric and Michele.
2 And so, we asked -- Kelly and I asked Jan (sic) and
3 Christy did most of the talking, Christy did, why
4 weren't -- we said, were Eric and Michele given the
5 opportunity to talk to Janet and ask her to go with
6 them? And they said, yes, they were. And we said,
7 why weren't we given an opportunity to talk to Janet?
8 And they said, because that's the way we decided to
9 do it.

10 Q Okay.

11 You said that they mentioned you were told
12 there were HR-related issues. Were you given any
13 specificity about what those HR-related issues were?

14 A I can't remember if it was in that same
15 conversation or a later conversation, that they did
16 mention that Eric and Michele told them, told
17 corporate that we were leaving, that Kelly and I were
18 leaving NAF. So I don't know if that was the
19 HR-related issue or not.

20 Q When did you learn that Eric and Michele had
21 told corporate that you and Kelly were leaving NAF?

22 A It was that week some time. I can't
23 remember if it was that phone call or if there was a
24 subsequent call.

25 Q So around reasonably proximate to when you

1 found out that Eric and Michele were splitting off?

2 A Yes.

3 Q So some time in the September or October
4 timeframe?

5 A Yes.

6 Q Were you given any specificity as to what
7 Eric and/or Michele had told corporate about the --
8 about the prospect of your and Kelly leaving NAF?

9 A No. No proof. No documentation. No --

10 Q Did you ever speak to Janet Hillis after
11 learning that she wanted to stay with Eric and
12 Michele about whether she, in fact, didn't want to
13 stay with them or was possibly interested in
14 remaining within the Southeast region?

15 A I did speak to Janet.

16 Q What'd she say?

17 A She said that she felt like she was in the
18 middle. And that Eric and Michele had promised her
19 dedicated -- more dedicated operation support and
20 that they would be in her market every week, because
21 they lived in Nashville, and that they were going to
22 be able to support her better.

23 Q Okay.

24 Do you know how long -- if you know -- do
25 you know how long Janet Hillis had known Eric

1 Fellows?

2 A Prior to coming to NAF? I think they only
3 met one time during -- when he tried to recruit her,
4 because I don't think they knew each other very long.

5 Q Do you know if Michele Hoefle knew Janet
6 Hillis?

7 A Not to my knowledge.

8 Q Okay.

9 Do you know -- do you recall when the split
10 actually occurred?

11 A I don't remember the exact date. September,
12 October.

13 Q You mentioned earlier that -- you know, that
14 you said that you disagreed about Chattanooga because
15 you recruited, nurtured, and invested in Chattanooga;
16 how did you invest in Chattanooga?

17 A We paid the Real Estate Partners AA and desk
18 rental since inception, which was probably
19 year-and-a-half, almost two years prior to that, at a
20 time in which it wasn't generating any business, so
21 it was a true expense.

22 And at the time the market was taken from
23 us, it had begun to produce enough business to
24 actually start to turn a profit or produce enough
25 volume to cover the expenses.

1 Q So the investment that you're referring to
2 is the payment of the Real Estate Partners desk
3 rentals and ASA?

4 A Part of it, yes.

5 Q Anything else?

6 A Other than time and energy, traveling to
7 Chattanooga for two years --

8 Q Right.

9 A -- I'm sure there were other expenses that
10 could probably be obtained from my expense reports
11 for dinners, lodging, those sorts of things.

12 Q Any expenses that you can recall that were
13 not reimbursed by NAF, associated with your
14 investment in Chattanooga?

15 A I don't have anything specific.

16 MS. GIBSON: Henry, is now a good time to
17 take a break?

18 MR. PERLOWSKI: Ya.

19 THE VIDEOGRAPHER: The time is 5:18 p.m., we
20 are off video record.

21 (Whereupon, a short break was taken.)

22 THE VIDEOGRAPHER: The time is 5:26 p.m., we
23 are back on video record.

24 MR. PERLOWSKI: Thank you.

25 BY MR. PERLOWSKI:

1 Q Ms. Spearman, from the testimony throughout
2 the day, at various points in time, additional
3 territory -- additional states were added to the
4 Southeast region from the original locations of
5 Georgia and South Carolina, correct?

6 A Yes.

7 Q Do you recall at any point in time when
8 states were added to the Southeast region, was
9 your -- do you recall your agreement ever being
10 amended to reflect the addition of those new states?

11 A I believe all the states were in the
12 original agreement.

13 Q Okay.

14 By the original agreement, what are you
15 referring to?

16 A 2016.

17 Q Okay.

18 So we have Exhibits One and Two in front of
19 us. We've marked Exhibits One and Two, which are the
20 offer letter and the Regional Manager Agreement.
21 Let's maybe do this sequentially.

22 Do you recall an offer letter to being any
23 reference to the specific states within your --
24 within the Southeast region?

25 A Okay. I understand what you're asking. I

1 do not recall my agreement ever being amended to add
2 a state.

3 Q Okay.

4 Do you recall either -- do you recall your
5 offer letter stating which states would be in your
6 territory?

7 A Could be getting it confused with Kelly's,
8 but I think mine -- let me read it. It may just
9 specify Southeast. Okay. Mine says Southeast.

10 Q Where?

11 A On page one of six, schedule one.

12 Q So you're referring to Exhibit Two?

13 A Yes.

14 Q Schedule one.

15 Which page are you referring to within the
16 document?

17 A 22 of 29 on the document filing.

18 Q Thank you. Okay.

19 It says, Southeast; do you see that?

20 A Yes.

21 Q And you agree the territories would be
22 subject to change at any time by the discretion of
23 executive management?

24 MS. GIBSON: Objection to foundation.

25 THE WITNESS: Yes.

1 BY MR. PERLOWSKI:

2 Q So when you -- when you entered into the
3 regional manager management agreement, you understood
4 that N-A-F could expand or subtract from your
5 territory, right?

6 A Right.

7 I didn't know that they would take away from
8 my territory for unjust reasons --

9 Q All right.

10 A -- to make things more profitable for
11 themselves.

12 Q But instead, you understood that a
13 discretion of executive management could be exercised
14 to change your territory?

15 MS. GIBSON: Objection. Asked and answered.
16 Form.

17 THE WITNESS: Yes.

18 BY MR. PERLOWSKI:

19 Q Aside from what may be in Ms. Allison's
20 agreement, did you ever receive any agreement from
21 N-A-F to pay a specific amount of marketing expenses
22 within the Southeast region?

23 A Other than the monthly recap for the
24 two years prior, where they paid it.

25 Q So for two years prior, N-A-F paid

1 7.5 percent -- 7.5 basis points?

2 A Two-and-a-half years, yes.

3 Q Did N-A-F pay -- let me ask the question
4 differently -- did N-A-F, to your knowledge, not
5 reimburse the Southeast region for any marketing
6 expenses that it incurred prior to the February '19
7 leadership meeting?

8 MS. GIBSON: Objection. Form.

9 THE WITNESS: I have to ask --

10 BY MR. PERLOWSKI:

11 Q Did it refuse a marketing -- did it -- did
12 N-A-F refuse to reimburse a marketing expense within
13 the Southeast region other than those specific
14 expenses that you referred to where you might have
15 exceeded a hotel budget or a dining budget?

16 A I don't believe they did, because we stayed
17 within the budget.

18 Q So, to your knowledge, any expense that was
19 submitted was approved and paid by N-A-F -- NAF?

20 A Any compliance-approved item, yes.

21 Q Okay.

22 Did you ever have a marketing expense
23 rejected due to it not being in compliance with NAF
24 policies, to your recollection?

25 A No.

1 Q When you entered your offer letter as
2 Exhibit One, Ms. Spearman, looking at paragraph one
3 of your offer letter, Ms. Spearman, you understood
4 when you signed the offer letter, that NAF could
5 change the terms and conditions of your employment,
6 including your position, duties, compensation -- and
7 compensation?

8 MS. GIBSON: Objection. Form and
9 foundation.

10 THE WITNESS: My understanding was that any
11 change to compensation would need to be in
12 writing and signed by all parties.

13 BY MR. PERLOWSKI:

14 Q Where's -- what's the basis for that
15 understanding, Ms. Spearman?

16 A Other than the basic definition of an
17 agreement, it is in -- there's the clause on number
18 one, on Page 1, that states, your status cannot be
19 changed except through a written agreement signed by
20 the CEO or COO.

21 Q It says your status as an at-will employee
22 cannot be changed except for a written agreement
23 signed by the CEO or COO, right?

24 A Yes.

25 Q Do you know what an at-will employee is?

1 A Yes.

2 MS. GIBSON: Objection. Form.

3 BY MR. PERLOWSKI:

4 Q Tell me what your understanding of what an
5 at-will employment -- employee is.

6 A That you can be terminated at any time or
7 you can resign at any time.

8 Q And your status as an at-will employee of
9 NAF was never changed, correct?

10 A That is correct.

11 Q Anything else that supports your belief that
12 NAF could only change your compensation by virtue of
13 a written agreement?

14 A Yes.

15 Q What?

16 A Page 5 of that document.

17 Q Okay.

18 Tell me where you are.

19 A I guess it would be the last sentence on
20 that page.

21 Q Go ahead.

22 A The material terms of your employment as set
23 out in this letter may not be modified or amended by
24 verbal agreement or course of contact -- course of
25 conduct, but only by a written agreement.

1 Q Presented by human resources, COO, or CEO?

2 A Correct.

3 Q Okay.

4 You would agree that this letter,
5 Exhibit One, says nothing about your marketing
6 budget?

7 A Correct.

8 Q And you would agree that this exhibit,
9 Exhibit One, says nothing about how pricing
10 exceptions would be handled?

11 A Correct.

12 Q You would agree that this exhibit,
13 Exhibit One, says nothing about how pricing
14 exceptions may have to be absorbed by the region?

15 A Correct.

16 My position that the agreement must be in
17 writing and signed by all parties was further
18 supported by the fact that when a loan officer's
19 compensation was changed, it was required that they
20 be sent a new agreement and sign it, as well as when
21 they formally finally changed our compensation in
22 March of 2020, both parties were required to sign it,
23 as was the 2016 agreement.

24 Q When you say, as was the 2016 agreement,
25 what do you mean?

1 A It was signed.

2 Q Oh, you mean -- you're meaning Exhibit Two
3 was signed?

4 A Yes.

5 Q Do you recall -- okay.

6 A Exhibit One and Two were signed.

7 Q You would agree that the sentence that
8 you're referring to on Page 5 doesn't say anything
9 about the written agreement having to be signed, it
10 just says it has to be presented by human resources,
11 COO, or CEO?

12 A Ya. I'm --

13 MS. GIBSON: Objection. Form. Foundation.
14 To the extent it calls for a legal conclusion.
15 Go ahead.

16 THE WITNESS: Yes. I'm not an attorney, but
17 I just -- in my experience, agreements, by their
18 true definition, have to be acknowledged by both
19 parties. And the way you acknowledge that is by
20 signature.

21 BY MR. PERLOWSKI:

22 Q Such as your signature to the various
23 schedules that we looked at earlier today?

24 MS. GIBSON: Objection. Form.

25 THE WITNESS: Is that a question?

1 BY MR. PERLOWSKI:

2 Q Ya.

3 Put a question mark at the end of it.

4 MS. GIBSON: It's hard to tell.

5 THE WITNESS: Ya.

6 If you can ask it again, please?

7 BY MR. PERLOWSKI:

8 Q Such as your agreement by -- evidencing by
9 your signature to all the schedules that we looked at
10 today, schedule four, six, and seven, eight, that you
11 signed, that would reflect your agreement?

12 A Yes. That further supports my understanding
13 of an agreement that it must be signed.

14 Q You would agree that the word presented,
15 means something different than the word signed?

16 MS. GIBSON: Objection. Form.

17 MR. PERLOWSKI: Plain English.

18 MS. GIBSON: Objection. Form. And to the
19 extent it calls for a legal conclusion.

20 BY MR. PERLOWSKI:

21 Q You would agree that the word presented
22 means something different than the word signed, in
23 plain English?

24 MS. GIBSON: Objection. Same objection.

25 MR. PERLOWSKI: I'd like her to answer the

1 question. You can object all you want.

2 MS. GIBSON: I know. Let me finish my
3 objection on the record, Henry.

4 MR. PERLOWSKI: You've already objected to
5 the same question on the record.

6 MS. GIBSON: Well, and you keep repeating
7 the questions, so I need to --

8 MR. PERLOWSKI: Because I'm not getting an
9 answer.

10 MS. GIBSON: Well, give her a minute.

11 Same objection. Form. To the extent it
12 calls for a legal conclusion.

13 And you can answer his question, if you
14 can.

15 THE WITNESS: Okay.

16 Yes. I don't have a legal background.

17 So --

18 BY MR. PERLOWSKI:

19 Q But, yes, in terms of plain English,
20 presented means something different than signed,
21 correct?

22 MS. GIBSON: Same objections.

23 If you agree or if you don't.

24 THE WITNESS: The words -- the words have
25 different definitions, yes.

1 BY MR. PERLOWSKI:

2 Q Okay.

3 So with respect to override bonuses, looking
4 at your offer letter, Exhibit One, and I'm
5 specifically looking at the bottom of Page 2 of
6 Exhibit One; but obviously, feel free to refer to any
7 other provisions as well. It says, Gina is eligible
8 to receive a regional manager override; do you see
9 that?

10 A Yes.

11 Q Okay.

12 And then I think we've talked about earlier
13 that compensation differential, up to 140 basis
14 points, that was the -- compensation differential is
15 if you were paying loan officers less than a certain
16 amount?

17 MS. GIBSON: Objection. Form.

18 MR. PERLOWSKI: Ya. I may have botched that
19 question. All right. Let's --

20 BY MR. PERLOWSKI:

21 Q Your testimony will speak for itself on
22 that. Okay.

23 So it says up to 140 basis points were
24 you -- maximum. Was it your understanding that you
25 could receive a compensation differential anything

1 from zero to 140 basis points on self-generated loans
2 and house accounts?

3 A Yes.

4 Q And you could receive anything from zero to
5 75 basis points on brokered loans?

6 A Yes.

7 Q Turning to your Exhibit Two, your Regional
8 Manager Agreement. Let's go to section 5.2,
9 Ms. Spearman. Just let me know when you're there.

10 A 5.2, I'm there.

11 Q Okay.

12 So section 5.2 says, manager -- that's you,
13 right?

14 A Yes.

15 Q -- will be eligible for commissions and/or a
16 monthly bonus payment based on branch overrides --
17 and that's then defined as override bonus -- as set
18 forth on schedule one; do you see that?

19 A Yes.

20 Q Okay. If you continue forward.

21 The next sentence says, schedule one to the
22 Regional Manager Agreement and/or the outside loan
23 originator agreement, Exhibit A, commission schedule,
24 may be adjusted up or down or otherwise amended by
25 company from time to time in its sole discretion; do

1 you see that?

2 A Yes.

3 Q So you understood that schedule one could be
4 amended by NAF from time to time in NAF's sole
5 discretion?

6 MS. GIBSON: Objection, to the extent it
7 calls for a legal conclusion.

8 THE WITNESS: I thought any change to my
9 compensation would need to be in writing and
10 signed.

11 BY MR. PERLOWSKI:

12 Q So when you read -- you said you read the
13 Regional Manager Agreement before you signed it. Did
14 you have any concern that the language said that NAF
15 could amend schedule one from time to time in its
16 sole discretion?

17 A I did not, because I thought that it had to
18 be amended in writing.

19 Q And you would agree that sole discretion
20 means just NAF's discretion, not yours?

21 A Sole means one, yes.

22 Q Okay.

23 If you look at -- go to schedule one,
24 Ms. Spearman, I'm on Page 23 of 29 if you look at the
25 top of the document. Section 1.3 of schedule one

1 which is page --

2 A Are you on Exhibit One?

3 Q I'm sorry. No. My apologies. I'm on
4 Exhibit Two. Done with Exhibit One for now. I'm on
5 Exhibit Two, which is your Regional Manager
6 Agreement, and I'm within schedule one. Schedule one
7 begins on Page 22 of 29.

8 A Page 22?

9 Q It starts on Page 22.

10 My first question is going to be on Page 23.
11 Just let me know when you're ready.

12 A I'm ready.

13 Q Okay.

14 So within section 1.3 there -- there's an
15 override bonus formula, do you see that, and that's
16 the language in italics in the -- within the
17 brackets?

18 A Yes.

19 Q Okay.

20 Did you understand that your override bonus
21 formula was subject to the limitations of 1.4B?

22 MS. GIBSON: Objection. Form.

23 THE WITNESS: I believed that 1.4B was not
24 applicable.

25 BY MR. PERLOWSKI:

1 Q Okay.

2 You believe that all of 1.4B was not
3 applicable?

4 A Yes.

5 Q Okay.

6 So let's look and see the -- let's go to the
7 Page 25 of 29.

8 Do you see there's a box for yes and a box
9 for no?

10 A Yes.

11 Q So yes says see attached schedule four, no
12 override during guarantee period; what does that
13 mean, no override during guarantee period?

14 A No override while an LO is on a guarantee.

15 Q Okay.

16 And that -- and so, the -- no override with
17 respect to an LO during the guarantee period, is
18 that -- is that what's referred to in the last bullet
19 point on Page 24 of 29, within section 1.4B, loan
20 applications taken during monetary guaranty (sic)
21 period?

22 A You're referencing back to Page 24 where?

23 Q Ya.

24 So, the no override during guarantee period
25 is where there's -- you don't get paid an override

1 for a loan officer's production during the guarantee
2 period, that's the topic, right?

3 MS. GIBSON: Where are you referring to?

4 MR. PERLOWSKI: I'm just asking a question.

5 BY MR. PERLOWSKI:

6 Q So, no -- the no override during guarantee
7 period refers to loan officers -- loans made by loan
8 officers during their guarantee period, right?

9 A No override during guarantee period means
10 exactly what it says. There's no override during a
11 guarantee period.

12 Q So, schedule four was Exhibit 12, right? So
13 if you pull out Exhibit 12, schedule four talks about
14 no override during loan officer guarantee period,
15 right?

16 A Right.

17 Q So that's where the schedule listed for
18 these specific loan officers, there would be no
19 override bonuses for loans made during these loan
20 officers' guarantee periods, right?

21 A Except for it says it's not applicable.

22 Q Okay. Right.

23 So, it says, yes, see attached schedule
24 four. That's referring to the loan officer override
25 during the guarantee period, right?

1 MS. GIBSON: Objection. Form.

2 THE WITNESS: Well, the box, yes, see
3 attached schedule is not checked.

4 BY MR. PERLOWSKI:

5 Q Right.

6 A So --

7 Q So if it was yes, you would refer to
8 schedule four, right?

9 A If it was checked, yes.

10 Q Okay.

11 So the yes is specific to schedule four,
12 correct?

13 A Yes. The yes is specific.

14 Q Okay.

15 Go to section four on schedule one, which is
16 on Page 26 of 29. Let me know when you're there.
17 Section four is titled modification of compensation
18 in bold.

19 A Yes.

20 Q You understood, when signing the Regional
21 Manager Agreement, that your compensation, including
22 but not limited to commissions and override bonus may
23 be restructured and/or adjusted up or down by company
24 in its sole discretion?

25 A I believe --

1 MS. GIBSON: Objection. Form. Document
2 speaks for itself.

3 You can answer.

4 THE WITNESS: I believed that any changes
5 had to be in writing.

6 BY MR. PERLOWSKI:

7 Q Did you believe that on November 6th of
8 2016?

9 A Yes.

10 MR. PERLOWSKI: We can go off the record for
11 a moment?

12 THE VIDEOGRAPHER: The time is 5:51 p.m., we
13 are off video record.

14 (Whereupon, a short break was taken.)

15 THE VIDEOGRAPHER: The time is 5:56 p.m., we
16 are back on video record.

17 BY MR. PERLOWSKI:

18 Q Ms. Spearman, thank you very much for your
19 cooperation today. I do not have any further
20 questions.

21 A Thank you.

22 MS. GIBSON: I have a few questions.

23 DIRECT EXAMINATION

24 BY MS. GIBSON:

25 Q Ms. Spearman, if you can pull out

1 Exhibit 12, Counsel showed you what he represented is
2 a composite of -- composite exhibit of schedule
3 fours. And I represented to you that I counted these
4 and there are six schedules in this composite
5 exhibit.

6 And the first one is dated July 12th, 2018.
7 To your knowledge, did you ever receive any schedule
8 fours before this date?

9 A No.

10 Q All right.

11 I'm going to ask you to look at Exhibit 13,
12 which is another composite exhibit that Counsel
13 showed you.

14 A Uh-huh.

15 Q And I'm going to represent to you that there
16 are ten here. And the first one is dated May 30th,
17 with your e-signature; do you see that?

18 A Yes.

19 Q To your knowledge, did you ever receive a
20 schedule six before May 30th of 2018?

21 A No.

22 Q And I want you to look at Exhibit 14, which
23 is what Counsel represented as a composite exhibit of
24 schedule sevens. I've counted these and represent
25 there are four here. And the first one is dated,

1 DocuSignature, May 15th; do you see that?

2 A Almost there.

3 Q Sorry.

4 A Yes.

5 Q And you testified that all of these
6 schedules in these three exhibits are DocuSigned; is
7 that correct?

8 A Yes.

9 Q And is it NAF's practice to have you
10 DocuSign agreements?

11 A Yes.

12 Q Prior to these exhibits dated May and July
13 of 2018, did NAF ever present you with an amendment
14 to -- an amended schedule one to your Regional
15 Manager Agreement?

16 MR. PERLOWSKI: Object to the form.

17 THE WITNESS: No.

18 BY MS. GIBSON:

19 Q Did you ever DocuSign an amended schedule
20 one to the Regional Manager Agreement after November
21 2016, but before March 1, 2020?

22 A No.

23 Q After -- in this time period of May,
24 July 2018, did Ms. Bunce ever reassure you that your
25 original agreement with NAF had never changed?

1 A Yes, she did.

2 Q And what did she tell you?

3 A She, I believe, sent at least one, if not
4 multiple emails, about their satisfaction with our
5 performance and that they had no intentions of ever
6 changing our deal or our compensation.

7 Q Okay.

8 I would like you to look at Exhibits 21 and
9 22 that Counsel showed you; 21 is dated 8/7/2017 and
10 22 is the 12/7/2017 email.

11 A I got 22. I don't have 21. Oh, here it is.
12 Okay.

13 Q And you testified about these earlier.

14 A Okay.

15 Q What was the purpose -- your purpose in
16 saying, I approve, in these emails?

17 A So that payroll could move forward primarily
18 so that our downline managers would be paid timely.

19 Q Did you saying, I approve, have anything to
20 do with your approval of NAF refusing to pay you
21 loans identified in your Regional Manager Agreement?

22 MR. PERLOWSKI: Object to the form.

23 THE WITNESS: It did not.

24 BY MS. GIBSON:

25 Q At the February 2019 leadership meeting, did

1 NAF specifically give the reason, misallocation of
2 \$30 million, as the reason for changing the policy
3 regarding PEs and marketing costs?

4 A Yes.

5 Q All right.

6 And if you can go back to your Exhibit One
7 and Two. And the last thing Counsel was asking you
8 about, before we broke, was Exhibit Two, Page 26.
9 And he read the first sentence of paragraph four at
10 the bottom there.

11 A (Nods head.)

12 Q And can you read the second sentence?

13 A Regional manager shall be provided notice of
14 any adjustments as required by law.

15 Q And what did you understand that to mean if
16 NAF wanted to make a change to your compensation?

17 A I believed that any change to my
18 compensation would need to be in writing, signed by
19 all parties.

20 Q And -- okay. Was that -- okay.

21 MS. GIBSON: I have no further questions.

22 RECROSS-EXAMINATION

23 BY MR. PERLOWSKI:

24 Q Ms. Spearman, it says regional manager shall
25 be provided notice of any adjustments as required by

1 law.

2 Is providing notice the same thing as a
3 signed agreement? Plain English.

4 MS. GIBSON: Object to the form.

5 THE WITNESS: Required by law.

6 BY MR. PERLOWSKI:

7 Q Right.

8 Do you have any legal training --

9 A My understanding of the agreement was that
10 any change to my agreement needed to be in writing
11 and signed.

12 Q Okay.

13 It says, regional manager shall be provided
14 notice --

15 MS. GIBSON: Of any adjustments as required
16 by law.

17 MR. PERLOWSKI: This is not your deposition.
18 I wasn't finished with my question. Please stop
19 interrupting me.

20 BY MR. PERLOWSKI:

21 Q Regional manager shall be provided notice of
22 any adjustments as required by law.

23 Notice, doesn't say written notice, correct?

24 MS. GIBSON: Objection. Form. Misstates
25 the document.

1 BY MR. PERLOWSKI:

2 Q Correct?

3 A I am not an attorney. I believed that
4 changes to my compensation and the word, agreement,
5 in and of itself, needed to be agreed to by both
6 parties.

7 Q Notwithstanding it says in multiple places
8 that your compensation could be changed by NAF in its
9 sole discretion; adjusted up or down --

10 A It also --

11 Q -- in its sole discretion --

12 MS. GIBSON: Objection. Form.

13 BY MR. PERLOWSKI:

14 Q -- right?

15 A It also states in several places that any
16 changes need to be made in writing.

17 Q You said, it says any changes need to be
18 made in writing; what are you referring to?

19 A We referenced, I believe, a paragraph in the
20 offer letter as well as --

21 Q Right.

22 The paragraph in the offer letter says that
23 the material terms of your employment as set out in
24 this letter may not be modified or amended by verbal
25 agreement or course of conduct, but only by a written

1 agreement presented by human resources, COO, or CEO;
2 that's what you're referring to?

3 A Yes. I signed these documents on the same
4 date, so they're both my agreement.

5 Q You said that Ms. -- when Ms. Gibson asked
6 you a question about your discussions with Ms. Bunce,
7 you said Ms. Bunce said that NAF had no intent to
8 change your deal or your compensation?

9 A Correct.

10 Q Did she say anything else with respect to
11 any change in your deal or compensation?

12 I know she said that they were satisfied
13 with your performance. I'm referring to,
14 specifically, any discussion about an intent to
15 change your deal or compensation.

16 A So your question is?

17 Q Did she say anything else other than NAF had
18 no intent to change your deal or compensation?

19 A Not that I recall.

20 Q And when were these assurances provided?

21 A We have email -- I believe discovery that we
22 provided. I can --

23 Q Okay. No. The discovery -- right. I can
24 look for those emails just as easily as Ms. Gibson
25 can.

1 A Okay.

2 Q Do you recall -- do you recall when
3 Ms. Bunce may have had any conversation with you that
4 may not be reflected in an email?

5 A You're asking me about verbal?

6 Q Ya. Yep.

7 A Oh, gosh. Many occasions. At the
8 November 2018 meeting would be one example.

9 Q And what did she say at the November '18
10 meeting?

11 A That we were exceeding all scorecard.

12 Q Did she say anything about any potential
13 change to your compensation at the November '18
14 meeting?

15 A I don't remember, specifically, on that.

16 Q Okay.

17 Do you recall any other -- any verbal
18 assurances that Ms. Bunce may have given you
19 regarding that there would be no changes to your
20 compensation, aside from anything that may be in an
21 email?

22 A I can't give you specific dates, but there
23 were -- there were multiple occasions in which she
24 assured of her satisfaction and that there was no
25 intention to change anything.

1 Q Okay.

2 Do you recall Ms. Preslo ever saying
3 anything about NAF having an intent or not to change
4 your compensation?

5 A No.

6 Q What about Mr. Reed?

7 A No.

8 MR. PERLOWSKI: Nothing further.

9 MS. GIBSON: I have nothing further.

10 This ends the deposition. Thank you.

11 THE VIDEOGRAPHER: The time is 6:07 p.m.,
12 this concludes today's videotaped deposition for
13 Gina Spearman. We are off video record.

14 (Whereupon, the deposition was concluded
15 6:07 p.m.)

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D I S C L O S U R E

STATE OF GEORGIA

COUNTY OF COBB

DEPOSITION OF GINA SPEARMAN

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of American Court Reporting Co., Inc.

I am not disqualified for a relationship of interest under provisions of O.C.G.A. 9-11-28(c).

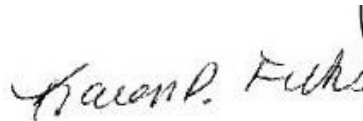
American Court Reporting Co., Inc., was contacted by the offices of Veritext to provide court reporting services for this deposition.

American Court Reporting Co., Inc., will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37 (a) and (b).

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American Court Reporting Co., Inc., will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

This, the 23rd day of November, 2021.



KAREN D. FUHS, RPR, CCR-2832

C E R T I F I C A T E

G E O R G I A :

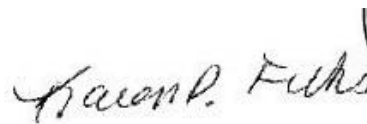
COUNTY OF COBB:

I hereby certify that the foregoing transcript was taken down as stated in the caption and the proceedings were reduced to typewriting under my direction and control.

I further certify that the transcript is a true and correct record of the evidence given at the said proceedings.

I further certify that I am neither a relative or employee or attorney or counsel to any of the parties nor financially or otherwise interested in this matter.

This, the 23rd day of November, 2021.



Karen D. Fuhs, RPR, CCR-2832

Spearman, Gina Vs. Broker Solutions, Inc. D/B/A New American Funding

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E R R A T A S H E E T

IN RE: GINA SPEARMAN V BROKER SOLUTIONS, INC.

d/b/a NEW AMERICAN FUNDING

CASE NO.: 1:20-cv--40981-CAP

DEPOSITION TAKEN ON: November 8, 2021

DEPOSITION OF: GINA SPEARMAN

I have read the transcript of my
deposition and find that no changes are necessary

_____.

Having read the transcript of my
deposition, I wish to make the following changes:

(Please state reason.)

Page _____, Line _____:

Page _____, Line _____:

Page _____, Line _____:

_____, GINA SPEARMAN,

Sworn to and subscribed before me, this the
____ day of _____, 2021;

_____, County, Georgia.

_____, Notary Public

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[2019 - abolished]

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Georgia Code

Title 9, Chapter 11

Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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